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S A D R Ž A J

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MEDIATION SETTLEMENT AGREEMENT UNDER THE SINGAPORE CONVENTION AS A CROSS-BORDER RESTRUCTURING INSTRUMENT

ABSTRACT: Since its adoption, the UN Convention on Mediation has been signed by 58 states. It provides an important legal framework for resolving commercial disputes and allows for the cross-border enforcement of such agreements. The less formal, less expensive, and more confidential nature of the process makes its use even more attractive to potential parties compared to other instruments. Once a settlement agreement is reached, the Convention also enables the parties to enforce it without the need for complex recognition proceedings. Due to these characteristics, mediation can be used as an instrument for restructuring and preventing insolvency. The purpose of this paper is to highlight the advantages of using mediation in cross-border restructuring under the rules set by the UN Convention on Mediation. The authors analyze the application of mediation agreements in practice throughout each stage of the process, as well as the advantages and

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disadvantages of mediation and their effects on cross-border restructuring proceedings. This paper employs dogmatic, normative, comparative, and case study methods.

Keywords: *Singapore Convention, settlement agreement, mediation, cross-border proceedings, restructuring.*

1. Introduction

In past decades, dispute resolutions have been marked by an increased implementation of alternatives to classic legal instruments (alternative dispute resolution, arbitration etc.) as more efficient tools. Restructuring of a debtor, in distressed business or one facing insolvency, requires quick, flexible, confidential and easily enforceable legal instruments. Such an important instrument seems to appear in the international scene since the Singapore Convention entered into force on 12 September 2020. So far, 58 states signed the Singapore Convention. However, the Singapore Convention has been ratified in only 12 countries. EU member states, by now, have not signed the Singapore Convention.

Although it is not the only international document concerning this issue, the Singapore Convention covers the wider scope of possible disputes and is open for almost all countries in the world. In this article, we will inquire whether the Singapore Convention may be used as a basis to an instrument for a mediation in a cross-border restructuring or preventing insolvency. The research used in this paper is based on dogmatic, normative and comparative method, supported with the case study method. Firstly, we will approach "mediation" as a legal instrument with its most important *pro et contra* features (par. 2). Subsequently, we will set out the main issues characteristic to cross-border restructuring as a mediation matter (par. 3). Then, we will address mediation as a topic under the Singapore Convention, namely international commercial dispute settlement (par. 4). This is followed by the applicable legal rules for such cross-border proceedings under the Singapore Convention (par. 5). Furthermore, we will discuss the main features of the act of settlement ('settlement agreement') reached by the parties affected by restructuring process assisted by a mediator (par. 6). Finally, we will analyze the enforcement of the settlement agreement as outcome of the mediation in a cross-border restructuring matter (par. 7).

2. Mediation as a legal instrument

In a resolution adopted by the General Assembly on 20 December 2018, the United Nations recognize the value of mediation as a method of amicably settling disputes arising in the context of international commercial relations (Preamble, UN Convention on Mediation, 2018).

Fundamentally, mediation is a negotiation process, slightly more formal than usual business negotiations. Mediation represents an alternative or negotiated dispute resolution (settlement) (UK Commercial Court Guide and Circuit Commercial Court Guide, 2022), conducted on a voluntary basis and being rather informal, in which two or more parties attempt to settle their dispute assisted by a third independent person/s (mediator/s). Mediation replaces, but does not undermine, judicial proceedings. The use of mediation may be imposed by the law or referred to by a court, but the final decision is made by the parties. If the law does not impose it, mediation is based on a special clause in the party agreement or settlement agreement, stipulated *ad hoc*. Compared to judicial proceedings and arbitration, it sets voluntary new equilibrium and results in a win-win outcome without undermining conventional proceedings and system (The World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes, 2021, p. 20). However, mediation is still infrequently used in practice. There are numerous reasons for this. Even as an alternative dispute resolution, mediation is rather new (*aliquid novi*) and parties are generally either referred to the mediation by court or required to use it by the law. Ignorance appears to be one of the biggest obstacles for its use. In practice, parties predominantly rely on their legal departments and classical approach to dispute resolution. Hence, it is necessary for them to take into account their interests and especially the cost-benefit ratio before eliminating the mediation as a possible resolution. Recent analysis shows that mediation in restructuring and insolvency matters provided good results in practice in those states where it has a longer tradition of use and where mediation culture has been developed (Mulder, 2017, pp. 8–13). Finally, a settlement agreement resulted from mediation is acceptable to parties from states with different legal, social and economic systems and it contributes to the development of harmonious international economic relations (Esher, 2015, p. 2). As it is easy to initiate and flexible to conduct, mediation may be used successfully as an early business crisis resolving instrument both within national and across national borders. Further, disadvantages of mediation lay in mutual distrust of the parties, usually short deadlines in complicated disputes, premature or late start of mediation process, lack of legal authority (such as arbiter or

judge) and often lack of knowledge required for successful settlement of the mediated matter, limitations for mediator to intervene in creation of the settlement agreement, difficulty for parties to reach consensus, presence of multiple parties etc. Especially in restructuring matters short time frame for reaching the consensus and multiple dissent parties stand regularly on the way of reaching consensus. They also require certain level of confidentiality in order to avoid negative impacts of the business crisis in public.

3. Cross-border restructuring as a mediated matter

Restructuring is a commonly used legal instrument in preventing a businesses' financial crisis and insolvency. It may be the subject of the regular restructuring of an out-of-court insolvency process (or workout) or an insolvency plan (insolvency reorganization), which, depending on the legal system, is based on voluntary, judicially adopted or judicially confirmed arrangements (Mokal, et al., 2018, p. 482). If the restructuring entity has multinational shareholders and creditors, it requires a specific legal instrument with cross-border effects providing equal protection for each one of them. Mediation may be useful both as international instrument and as crisis preventing instrument (Đurić & Jovanović, 2020, p. 185). If the business is at stake, it is necessary to secure its viability and to avoid any further loss of its value. That is why mediation has to be agreed and implemented in a short term. In the case of cross-border business restructuring, mediation, as a process, is perceived as suitable for a multi-party settlement agreement being a main pillar of a future restructuring plan, which is, in fact, a negotiated settlement (Đurić & Jovanović, 2023, p. 438).

If it is performed out of judicial or insolvency proceedings, the subject of restructuring is a very negotiable matter. The restructuring debtor still holds control over its business and assets and its creditors have interest to keep the debtor's business going concern in order to get their claims paid to a higher extent than in insolvency proceedings (Madaus, 2018, p. 621). No such agreement requires a mandatory confirmation by the court. On the contrary, in insolvency proceedings, any negotiation outcome has to have appropriate majority support of creditors and to be confirmed by the court. There are two possible solutions in this respect. First, if the insolvency debtor keeps the control over its assets (*debtor in possession*), it may try to negotiate the restructuring plan and to obtain creditors' majority support according to the amount of their claims. Secondly, the more usual situation is when the debtor loses control over its business and assets, which passes into the hands

of an insolvency administrator. In that case, any further negotiations on claims settlement may be conducted only between the insolvency administrators and (majority claim) creditors and in with respect of the ongoing insolvency procedure.

The subject of mediation may be different civil law claims, both monetary and non-monetary, as well as others in compliance with the law settle-able claims. However, in restructuring, it relates mostly to the monetary creditors' claims (principal, interest, etc.). Restructuring claims may be claims of creditors against the debtor or mutual claims of debtor and creditors. Creditors may be financial creditors, suppliers of goods or providers of services, public bodies, employees and finally debtor's shareholders. They also may be categorized as creditors of unsecured or ones of secured claims, which entitles them to separate settlement. Restructuring measures regarding claims may be enforced individually or combined (Walters, 2015, p. 378). They may be combined with claim restructuring and might include selling and liquidation of property or transfer of such property for the purpose of settling claims, conversion of receivables into capital (*debt equity swap*), issuance of securities and other measures for the implementation of restructuring (Čolović, 2023, p. 302). Such measures require an appropriate preceding decision of the assembly of equity holders. The aim of a mediated settlement agreement in restructuring is not only to resolve the commercial dispute between parties but also to provide sustainable recovery to the debtor. Mediation may help business parties in an international and multilateral relation to secure claim satisfaction and sustainable continuation of business.

Singapore Convention addresses exclusively international commercial disputes. May a restructuring process concerning international parties be regarded as a dispute? In such a matter when multiple parties are affected, consequently, different interests will necessarily come in collision. Therefore, the notion of dispute in terms of the Singapore Convention should be assumed in a broader sense (Zukauskaite, 2019, p. 212). Preventing disputes in the matter of restructuring has the same effect as resolving an existing dispute. In a multiple-interest matter such is a restructuring, a dispute may arise if any conflict of interests of parties exists (Meidanis, 2020, p. 278). That might be equity holders of the restructuring debtor or its creditors. Since the settlement is based on an agreement, there is no obstacle for the debtor to prevent future disputes by stipulating terms of restructuring with its creditors *ex ante*. However, if there is no such agreement, once the restructuring process is burdened by a dispute, interested parties may recourse to mediation by stipulating mediation agreement *ex post*. If such legal matter as restructuring

may be negotiable, there is no obstacle to make it a subject of mediation. Despite that, restructuring in insolvency is usually not considered as a commercial matter (Eidenmüller & Griffiths, 2009, p. 6).

For entrepreneurs and micro, small and medium enterprises (hereinafter: MSMEs), with predominantly international business partners, the use of mediation as restructuring and insolvency prevention instrument might be of crucial importance (Mokal, et al., 2018, pp. 65–72).

An important study of the European Law Institute, Rescue of Business in Insolvency Law, conducted in 2017, analyzed the resolutions for the rescue of financially distressed businesses. This study suggests in Recommendations 1.07, 1.08 and 1.09 that the cross-border mediated agreements may rather be implemented "voluntarily and preserve an amicable and sustainable relationship between parties" (Instrument of the European Law Institute, 2017, p. 126).

Additionally, World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes (Principle B4) affirm that an informal workout process may work better if it enables creditors and debtors to use informal techniques, such as voluntary negotiations or mediation or informal dispute resolution (The World Bank Revised Principles for Effective Insolvency and Creditor, 2011, p. 9).

In recent years, mediation has been introduced in several national legislations as an instrument of preventive and cross-border restructuring and insolvency. This should encourage parties in commercial matters to use mediation for settling international disputes as well.

4. Mediation matter under Singapore Convention

The Singapore Convention does not contain restraints on regulating claim settlements, but it strictly defines matters where it does not apply. Its rules apply to agreements resulting from mediation and conclusions, in writing, by parties to resolve international commercial disputes ("settlement agreement"). From the point of view of the subject, commercial disputes arise out of business relations and, within the framework of the Singapore Convention, between business entities. In practice, as mentioned above, mostly monetary claims emerge from such relations. However, in a settlement agreement, particularly in an event where the offsetting of mutual claims has been agreed upon, the claims may be settled by non-monetary means. Formally, these are disputes, which fall under jurisdiction of commercial courts (if such jurisdiction exists in a specific country) and arbitrations. In restructuring matters, in general,

such disputes relate to claims of creditors, shareholders, employees or even public bodies and their multiplication may result in an impending insolvency or in over-indebtedness. In such cases, but also in the event of insolvency, mediation provided by the Singapore Convention might be of great importance in reaching agreement on disputed claims (Lepetić, 2020, pp. 156–176).

The notion of dispute in terms of the Singapore Convention should be understood in a broader sense. Preventing disputes in the matter of restructuring has the same effect as resolving an existing dispute. In a multiple interest matter such as a restructuring, a dispute may arise if any dissent of interests of parties exists (Goldberg, Sander, Rogels, Cole, 2003, p. 438). That might be equity holders of the restructuring debtor or its creditors. Depending on its scope and effects, any dispute may have more or less impact on the sustainability of the debtor's business (Carballo & Fach 2017). If a dispute concerns a matter that was already resolved by a settlement agreement, the party is allowed to invoke the settlement agreement before the competent authority of the signatory state, in order to prove that the matter has already been resolved.

Though, the Singapore Convention does not apply to settlement agreements concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes, relating to family, inheritance or employment law. Furthermore, it excludes settlement agreements approved by a court or recorded and are enforceable as an arbitral award. In addition, the Singapore Convention does not apply to disputes referring to employment law (Art. 1.3. and 3.2. UN Convention on Mediation, 2018).

Therefore, at the first glance, there is no reason not to consider restructuring matter as a possible subject of a commercial settlement agreement resulting from mediation under Singapore Convention. Additionally, a debtor's restructuring plan, broadly supported by its creditors (and approved by a court), provides for the parties most desirable debt satisfaction. In order to enter into the scope of application of the Singapore Convention, the restructuring of business/a debtor has to have an international character. Primarily, the international character of the dispute exists if at least two parties to the settlement agreement have their places of business in different signatory states. Thus, a settlement agreement concluded under the rules of the Singapore Convention excludes all domestic dispute resolution and agreements with no relation to a signatory state.

If a party has more than one place of business, the relevant place will be the one which has the closest relationship to the dispute resolved by the settlement agreement. Thereby all circumstances known or contemplated by the parties at the time of the conclusion of the settlement agreement should be

taken into account. If any party does not have a regular place of business, the settlement agreement may refer to the party's habitual residence.

5. Mediation process under the Singapore Convention

Mediation means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute (Art. 2.3. UN Convention on Mediation, 2018). In international commercial matters, including cross-border restructuring, mediation serves as an instrument or a minimum formality process during which business parties and/or their legal representatives are brought together and assisted by mediator to resolve upcoming or already existing dispute. It may be regulated as mandatory by the law or voluntarily and embedded in a preceding mediation agreement or clause, but it entitles any party to give up at any moment and recourse to the usual judicial way of claim satisfaction.

In the matter of mediation, two agreements should be distinguished: 1) a mediation agreement or a clause on mediation and 2) a settlement agreement resulting from mediation. The first agreement or clause prorogates the ordinary jurisdiction and bounds parties to try to resolve their dispute in mediation. With the second agreement, parties settle their dispute partially or wholly. Both, the mediation agreement and the settlement agreement resulted from mediation, are governed by general rules of contract law, applicable to the respective agreement.

The mediator, under the rules of the Singapore Convention, may be a natural person with appropriate education and/or practice/knowledge accredited to mediate disputes (World Bank Group, 2022, p. 22). It may also be a legal person attested from the competent authority to carry out mediation. Contrary to the judicial authority, the mediator has no territorially related competence, but has to be an accredited professional or judge performing *extra fori*. This feature makes mediation suitable for resolving disputes without defined forum. Nonetheless, its neutrality is not intangible and has to be monitored during the whole process by the parties and/or their legal representatives. In some countries, it is required for a mediator to have domestic citizenship, thus reducing neutrality of mediator and use of mediation in cross-border commercial dispute resolution (Kınıkoğlu, Parmaksız & Solak, 2020, p. 1).

Parties voluntarily decide on applicable law (*lex voluntatis*) for the entire mediation process. They can make the right choice of applicable substantial law

and jurisdiction where the settlement agreement has to be enforced. Additionally, they may participate in the mediation process represented, personally, with or without their legal representatives. Legal representatives of parties need to have proper letters of authorization. In an international commercial mediation, language barriers may be overcome by using a common language for the negotiations or with the assistance of a sworn court interpreter.

In a mediated cross-border restructuring, three levels of possible mediation process might be considered. Firstly, mediation may be conducted internally by the debtor. This means that the debtor itself or its equity holders with dissenting interests (debtor internal negotiations) can reach a basic settlement agreement through a mediation process in order to prepare for negotiations with its creditors. Secondly, a settlement agreement may further be stipulated with foreign creditors based in the signatory states (external debtor – creditors' negotiations). Finally, the third level of mediation process represents negotiations with other creditors in non-signatory states.

The Singapore Convention provides that signatory countries will allow the party to raise the settlement agreement in order to prove that a commercial matter has already been resolved in accordance with its rules of procedure and in compliance with the conditions set forth in the Singapore Convention (Art. 3.2. UN Convention on Mediation, 2018).

The negotiation within the process of mediation is normally confidential and may include common sessions and separate ones. Negotiations are usually conducted physically. In modern time and if parties agree, they may be conducted as online mediation session as well (World Bank Group, 2022, p. 22). However, final session at which the settlement agreement is signed typically takes place in person.

6. Act of settlement under the Singapore Convention

According to the Singapore Convention on Mediation, a settlement agreement resulting from mediation has to be concluded in writing by parties in order for an international commercial dispute to be resolved. A settlement agreement is not bound to a strict form. It is considered as done "in writing", if its content is recorded in any form. The requirement that a settlement agreement is in writing is also met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference. The settlement agreement should have signatures of all parties and the mediator. If the mediator is a legal person, it should provide an attestation accompanying the agreement (Art. 4.2. UN Convention on Mediation, 2018).

A settlement agreement on commercial matters resulting from mediation has limited possibility to be voided. Parties may attempt to void the agreement on the grounds set by the Convention and subject to the applicable general rules of contract law solely. The validity of the agreement should be examined in accordance to the generally accepted rules of international commercial law (Bonell, 2018, pp. 15–41). The legal capacity of each party has to be examined in accordance to its national legislation (*lex nationalis)* (Walters, 2015, p. 386). Applicable legislation has to be determined regarding the content of the settlement agreement (*Leandro, 2017,* pp. 947–954). In cases where only debt relations are restructured, the applicable law remains a negotiable matter and primary *lex voluntatis* is applied. If the parties haven't determined any applicable law, *lex cause* steps on the floor. This principle embodies the closest connection for both a contractual dispute, a tort law dispute, property and internal affairs (Madaus, 2021, p. 10). However, if agreement relates to the debtor's assets, there are also alternatives to consider (the rule *lex rei sitae* for real assets, the rule *lex rei sitae* regarding movable assets, if assets do not change their location and *lex loci destinationis* regarding movable assets in transit) (Knežević & Pavić, 2017, pp. 101–104).

On an international commercial level, mediation settlement of disputes is based entirely on *lex voluntatis* of interested parties. If they conclude a settlement agreement assisted by a mediator, in some EU countries, they also may use the recently adopted legal restructuring framework to enforce it (Đurić, & Jovanović, 2023, p. 70).

Once concluded, settlement agreements may be directly enforced in a signatory country, in accordance with the rules of procedure and in compliance with the conditions set forth in the Singapore Convention. An interested party has to submit the agreement to the competent authority for this purpose (Art. 4.1. UN Convention on Mediation, 2018). A settlement agreement resulting from mediation in compliance with the Singapore Convention is easier to recognize with fewer formalities and to enforce in a signatory state. Moreover, it has the same effect as an arbitral award in compliance with the New York Arbitration Convention.

7. Enforcement of a cross-border settlement agreement

An international commercial dispute settlement agreement stipulating debtor restructuring and/or insolvency prevention concluded in compliance with the Singapore Convention should be considered to be a restructuring plan provided with enforcement title by the rules of the signatory state in

which debtor has its seat or assets (Koo, 2016, p. 94). However, the question remains how to protect the rights of dissent creditors/parties non-participating in the settlement agreement. Although the Singapore Convention provides the effect of an enforcement instrument to the settlement agreement resulted from mediation, post-mediation behavior of parties also remains rather important.

If a debtor meets its obligations under the settlement agreement no further actions are required. However, if the debtor fails to fulfill these obligations, the following alternatives have to be considered: 1) the settlement agreement is directly enforceable in a signatory country on all claims and all debtor assets, 2) the settlement agreement is enforceable only on claims and assets situated in the signatory country and 3) the settlement agreement has to be recognized.

In countries where a settlement agreement is directly enforceable, it produces effect as a resolved matter (*res iudicata*) (Walters, 2015, p. 388). Covering the enforcement expenses is generally determined in the settlement agreement. In restructuring and insolvency matters, mediation costs are paid by the estate in restructuring (Esher, 2015, p. 2). The same should be applied in the event of enforcement expenses. A party relying on a settlement agreement has to provide, to the competent authority, the settlement agreement signed by the parties and evidence that the settlement agreement resulted from mediation (Peters, 2019, p. 16).

If a dispute arises concerning a matter that a party claim to be already resolved by a settlement agreement, the competent authority of the signatory state has to allow the party to invoke the settlement agreement in order to prove that the matter has already been resolved (Anderson, 2015, p. 112). The competent authority may also refuse to grant the enforcement title (Art. 7, UN Convention on Mediation, 2018). Where a settlement agreement is enforceable on claims and assets situated in a signatory country solely, the competent authority has to consider if any other domestic or foreign proceedings are pending (Schnabel, 2019, p. 43). If this is not the case, the provisions of the settlement agreement resulted from mediation are partially enforced regarding the respective claims and assets.

8. Conclusion

The main objective of a mediated international settlement agreement aimed to resolve dispute in commercial matters is to provide the parties with an easily accessible and internationally enforceable instrument and to avoid any time and money consuming process. The Singapore Convention provides such an important instrument to the interested business parties. Interested

parties may agree to use it in a mediation agreement or a mediation clause. Contrary to some other international documents in this matter, it strives to have universal application and does not exclude restructuring and insolvency prevention issues as possible subject of a settlement agreement. If a restructuring represents the subject of such mediated settlement agreement, it has one more important objective – securing sustainable business performance of the debtor. Moreover, the restructuring based on a mediated settlement agreement may provide to the creditors an attractive debt payment without undermining legal framework in force. The advantage of mediation lays its non-mandatory use, but its effectiveness depends often on each particular case. Mutual distrust between(multiple) parties and lack of authority in reaching the settlement agreement represent its main disadvantages. Furthermore, mediation secures a less formal, but confidential process of dispute settlement. The act of settlement in compliance with the rules of Singapore Convention is disburdened from unnecessary formalities and relies on general rules of contract law. Interested parties decide on the collective effect of the mediated settlement agreement in restructuring matters. Consequently, only parties to the settlement agreement are bound by its effect. On an international level a settlement agreement allows to avoid obstacles of the difference between national legislations and to resolve disputes without a defined forum. Considerably less expensive than arbitration and judicial proceedings, it allows the debtor to avoid expenses jeopardizing a planned restructuring process. Thus, Singapore Convention allows not only cross-border restructuring and transnational dispute management instrument, but also insolvency preventive instruments. For MSMEs this might be of crucial importance. Once the settlement agreement has been signed, the Singapore Convention provides for an enforceable instrument in the signatory states to the parties. In non-signatory states, a settlement agreement requires recognition from the judicial or other competent authority in order to be enforced. From practical experience, mediation not only allows parties to control the process from its beginning to the moment of signing the settlement agreement, but it provides voluntary outcome and secure future trust between business parties. However, successful restructuring depends also on broader support of creditors. Mutual trust remains crucial for a successful conduct of restructuring process, recovery of the debtor and sustainability of future business.

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SPORAZUM O PORAVNANJU IZ MEDIJACIJE PREMA SINGAPURŠKOJ KONVENCIJI KAO INSTRUMENT PREKOGRANIČNOG RESTRUKTURIRANJA

APSTRAKT: Od usvajanja, Konvenciju UN o medijaciji potpisalo je 58 država. Ona pruža važan pravni okvir za rešavanje privrednih sporova i omogućava prekograničnu primenu takvih sporazuma. Budući da je manje formalan, jeftiniji i poverljiviji proces, to čini njenu primenu još privlačnijom za potencijalne stranke u poređenju sa drugim instrumentima. Kada se postigne sporazum o poravnanju, Konvencija takođe omogućava stranama u sporazumu da sprovedu izvršenje bez komplikovanog postupka priznanja. Zbog ovih karakteristika, medijacija se može koristiti kao instrument za sprovođenje restrukturiranja i sprečavanje stečaja. Cilj ovog rada je da istakne prednost primene medijacije u prekograničnom restrukturiranju prema pravilima UN Konvencije o medijaciji. Autori ovog rada analiziraju primenu sporazuma iz medijacije u praksi kroz svaki deo procesa, prednosti i nedostatke medijacije, kao i njegova dejstva u postupcima prekograničnog restrukturiranja. U ovom radu korišćeni su dogmatski metod, normativni metod, uporedni metod, metod studije slučaja.

Ključne reči: *Singapurška konvencija, sporazum o poravnanju, medijacija, prekogranični postupak, restrukturiranje.*

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POSSIBILITY OF APPLYING THE RULES OF INTERNATIONAL HUMANITARIAN LAW TO CYBER WARFARE

ABSTRACT: Cyber warfare represents a new form of conflict in today's world. Unlike earlier traditional armed conflicts, cyber warfare is different in terms of means, methods, techniques, and actors. Cyber warfare takes place in virtual space through the use of information and communication technologies. The actors may be states, but also individuals who can inflict significant damage on their opponents. The consequences of cyber attacks may not be immediately apparent, but can manifest much later. Similarly, the outcome of a cyber attack can be material damage or the loss of human life. Since cyber operations can take place not only during conflicts but also in peacetime, the concept of cyber aggression is often present. States are aware of the new cyber threats and are developing their defensive and offensive capabilities, adopting strategies and doctrines addressing these issues. However, there is no international agreement that regulates the open issues related to cyber warfare, as there is no consensus among states on how to regulate it. There are attempts to apply the rules of international humanitarian law that govern armed conflicts to the realm of cyber warfare. Consensus within the international community has not been reached, leaving this area unregulated. The paper aims to examine the possibility of applying the rules of international humanitarian law, specifically the rules

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governing the right to use force in international relations (jus ad bellum) and the rules governing the conduct of parties in conflict (jus in bello), to cyber warfare

***Keywords**: cyber warfare, cyberspace, jus ad bellum, jus in bello.*

1. Introduction

The 20th century is often marked as the century of armed conflicts. The First and Second World Wars resulted in a massive number of casualties, destruction, and the use of nuclear weapons. Concurrently, during the 20th century, there was a codification of rules limiting warfare actions. Over time, these rules have been developed and adapted to new humanitarian trends, and the commonly accepted term for this branch of law has become international humanitarian law of armed conflict (Petrović, 2010). Integral to this branch of international law is the right to the use of force (jus ad bellum) and the rules regulating the conduct of parties in conflict (jus in bello). The right to the use of force in international relations is restricted by Article 2(4) of the Charter of the United Nations. In situations where force is used, parties in conflict are obliged to respect the limitations imposed on them by the rules of international humanitarian law. The principles of distinction, proportionality, and military necessity represent the starting point for warfare actions. Given that the rules of international humanitarian law relate to armed conflicts, a particular challenge to these provisions is presented by cyber warfare as a new form of conflict. New threats to states emerge from cyberspace or the digital realm. The actors in cyber warfare are different from those in traditional armed conflicts. The means, methods, and weapons used in cyber warfare are not identical to those in previous conflicts. The goal of cyber warfare is not military superiority but rather information and the opponent's information and communication infrastructure. All of this can cause tremendous harm to the state that is the subject of the attack, so states today invest significantly in cyber security and develop their capacities. Although there are documents at the national level, it is not possible to achieve consensus on cyber warfare at the international level, so this issue remains unregulated. This paper examines the possibility of applying existing rules of international humanitarian law to cyber warfare. In addition to the introduction, the paper contains three more sections and a conclusion, along with a list of used literature and relevant documentation. The first part of the paper analyzes the concept of cyber warfare and its main characteristics. The second part discusses the rules of

international humanitarian law relating to the right to use force in international relations, as well as the possibility of their application to cyber warfare. The third part of the paper analyzes the principles of distinction, proportionality, and military necessity, as well as the possibility of their application to the field of cyber warfare.

2. Concept of Cyber Warfare and Its Main Characteristics

War is not foreign to human civilization. Its forms, methods, means, and techniques have changed throughout history. When talking about the existence of war or armed conflict, it implies the use of military capabilities of states in conflict. However, cyber warfare differs from traditional forms of armed conflict. Today, the existence of war does not necessarily require two armies to engage on the battlefield. Cyber warfare represents a "subset of information warfare, which does not require a traditional battlefield but attacks occur in cyberspace and are directed at enemy information and information and communication infrastructures" (Putnik, 2022, p. 69). Adkins (2001) defines cyber warfare as "the use of computer techniques of intrusion and other capabilities against the opponent's infrastructure based on information and communication technologies, with the intention of compromising national security or preparing for future operations against national security" (p. 13). There are numerous definitions of cyber warfare. According to one of them, cyber warfare represents "the use of state-sponsored weapons within the cyber domain to create problematic and destructive effects in the real world" (Raboin, 2011, p. 609). Cyber warfare is a conflict that takes place in cyberspace or the digital realm using information and communication technologies, aiming to affect the security of the attacked state and thus cause significant damage.

Cyber warfare, as a new form of conflict, does not have the same characteristics as traditional armed conflicts. "The most important characteristic of cyber warfare is that it takes place partially or entirely in cyberspace or through it (by acting from cyberspace on the physical world and vice versa)" (Mladenović, Jovanović & Drakulić, 2012, p. 91). Cyberspace is defined as "a human creation created by the application of information and communication technologies in the electromagnetic environment in which data are created, stored, sent, received, processed, and destroyed, whose elements are data, systems, processes, and people who are networked or can be networked" (Mladenović, 2016, p. 77). "Mastering information, establishing control over it, and the ability to create and present one's own perception of reality have promoted information as the primary object of cyber warfare, and cyber

warfare as the primary form of conflict" (Putnik, 2022, p. 90). On the other hand, information and communication infrastructures represent one of the primary objects of cyber warfare due to their connectivity with other critical infrastructures, which can cause enormous damage to the daily lives of the population of the attacked state (Vesić & Bjelajac, 2023, p. 85). What happens in cyberspace can "result in human casualties and material destruction in the physical world" (Putnik, Milošević & Bošković, 2017, p. 176).

Key differences between cyber warfare and traditional armed conflicts lie "in terms of the type of means, participants, and methods by which conflicts are waged" (Mladenović, 2016, p. 246). Based on the intentions or motives of cyber warfare subjects, as well as their threat-inducing techniques, the following classification of subjects has been made. Cyber warfare subjects include hackers, crackers, hacktivists, insiders, criminal groups, terrorists, corporations, national armies, and security services (Putnik, 2022, pp. 97-98). In traditional armed conflicts, subjects were embodied in states, while later conflicts were waged between states and certain armed groups on their territory. Today, cyber warfare subjects can be individuals and groups with the intention and desire to cause harm, as well as specific knowledge in cyberspace necessary for carrying out cyber attacks. For cyber warfare subjects, resources and geographic distance from the target of the attack do not pose difficulties for conducting cyber operations. Furthermore, practice has shown that it is very difficult to determine the identity of those behind cyber attacks, enabling subjects to evade responsibility for them. The use of cyber weapons will become increasingly common in the future compared to traditional kinetic weapons, considering the effects they have and their relatively low cost (Pool, 2013).

Regarding the methods and means of cyber warfare, they are not the same as the means and methods of traditional armed conflicts because cyber warfare is not waged on the battlefield but in cyberspace. There are several classifications of means and methods of cyber warfare in academic literature. Some authors classify cyber weapons as denial of service, malicious programs, logic bombs, IP address spoofing, and Trojan horses (Raboin, 2011). On the other hand, Professor Putnik (2022) divides the means and techniques of cyber warfare into those that are part of cyber attacks and propaganda operations. The means and techniques of cyber attacks include means for automated information gathering and conducting attacks (malicious code and service obstruction) and special techniques of individual deception (social engineering and phishing) (p. 82). These characteristics of cyber warfare, based on which this type of conflict differs from traditional armed conflicts,

pose major obstacles when attempting to apply the rules of international humanitarian law to cyber warfare. In the next part of the paper, the rules of international law relating to the right to use force in international relations (jus ad bellum) are presented, as well as the possibility of their application to cyber warfare.

3. Rules of International Law Jus Ad Bellum

Integral to the theory of just war are the rules regarding the right to use force in international relations (jus ad bellum). The right to use force is limited by the establishment of the United Nations. The Charter in Article 2(4) states that states "shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations" (Charter of The United Nations, 1945). There are only two exceptions to this rule: the use of force in the case of self-defence under Article 51 and in situations where the Security Council considers there to be a threat to peace, a breach of peace, or an act of aggression under Chapter VII of the Charter. Since the United Nations Charter was adopted in 1945, its creators did not envision the possibility of using information and communication technologies and the internet for warfare purposes. When considering the right to use force in international relations, it is necessary to also consider the concept of aggression. Resolution 3314, adopted by the United Nations General Assembly in 1974, defines aggression as "the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state, or in any other manner inconsistent with the purposes of the United Nations Charter" (Definition of Aggression, 1974). Although specific acts of aggression are defined by the text of the Resolution, all of them are linked to the use of armed force. On the other hand, cyber warfare does not necessarily entail the use of armed force, nor does the subject necessarily have to be a state.

When interpreting the provisions of the Charter in the context of cyber warfare, a problem arises regarding whether a cyber attack can be classified as the use of force. Analyzing the compatibility of cyber attacks with the United Nations Charter, Schmitt (1999) concludes that existing rules of international law on the use of force (jus ad bellum) can be applied to cyber warfare. Cyber warfare has become a subject of interest not only for the academic community but also for states and certain organizations. States have recognized the potential for cyber warfare in the future and have begun to invest significant resources and efforts in this area, as well as to develop their own defensive and

offensive capabilities. Many regional organizations are interested in the field of cyber security and cyber warfare and actively work on cyber defence. The cyber attacks on Estonia in 2007 were particularly significant for NATO. These attacks represented a "kind of 'alarm' for NATO, as they demonstrated that entire states could be disabled and their sovereignty endangered by actions in cyberspace" (Putnik, 2022, p. 110). Within NATO, the Tallinn Manual on the International Law Applicable to Cyber Warfare (2017) was developed. The Tallinn Manual provides that "a cyber operation that constitutes a threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations, is unlawful" (pp. 42-43). Article 11 defines the use of force as follows: "a cyber operation constitutes a use of force when its scale and effects are comparable to non-cyber operations rising to the level of a use of force" (p. 45). The level of the use of force is determined by the criteria of "scale and effects," referring to the Nicaragua v. United States case. Besides its immense value in terms of the potential application of the rules of international humanitarian law to cyber warfare, the manual does not represent a binding document that obliges states to act in a certain way in their mutual relations.

On the other hand, some authors believe that existing rules of international law on the use of force cannot be applied to the realm of cyber warfare and that it is necessary to establish a new set of legal rules to regulate this area.[1] Considering the possibilities of applying jus ad bellum rules to cyber warfare, some authors like Silver (2002) suggest that "efforts should be made towards adopting an international convention that would compel parties not to use attacks on computer networks for military or hostile purposes" (p. 94). However, it should be noted that whether the rules of jus ad bellum can or cannot be applied to the realm of cyber warfare, states in international relations should not act solely at their own discretion. This is supported by the advisory opinion of the International Court of Justice in the case of the Threat and Use of Nuclear Weapons, which states that "it cannot be concluded that existing principles and rules of humanitarian law do not apply to nuclear weapons. Such a conclusion would be inconsistent with the inherent humanitarian character of legal principles that permeate the entire law of armed conflict and apply to all types of wars and all types of weapons, those from the past, those from the present, and those from the future" (Legality of the Threat or Use of Nuclear

[1] For more see: Kilovaty, I. (2015). Rethinking the prohibition on the use of force in the light of economic cyber warfare: towards a broader scope of Article 2 (4) of the UN Charter. *Journal of Law and Cyber Warfare*, 4, 210-244.

Weapons: Advisory Opinion, 1996, par. 87). Although the consequences of cyber warfare and nuclear warfare are not comparable in scale, this advisory opinion can also be interpreted in the context of cyber warfare given that it is not regulated by new international instruments. However, the adoption and implementation of international treaties regulating a particular area depend on the will of states and their willingness to comply with the adopted provisions. Considering the historical inability to reach a consensus at the international level regarding cyber warfare, it seems that even in the event of adopting a potential cyber warfare treaty, it would face a fate similar to the Treaty on the Prohibition of Nuclear Weapons.

4. Rules of International Law Jus in Bello

International humanitarian law aims to regulate the conduct of parties during armed conflict, as well as the means and methods they have at their disposal. An integral and essential part of international humanitarian law consists of certain principles that parties to the conflict are obliged to respect. In this regard, this part of the work is dedicated to the principles of distinction, proportionality, and military necessity, as well as the possibility of their application to the realm of cyber warfare. The principle of distinction serves to protect civilians and civilian objects from attack. Parties to the conflict are obligated to carry out attacks only on military personnel and military objects. By the First Additional Protocol, military objectives are defined as objects: "which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage" (Knežević-Predić, Avram & Ležaja, 2007, p. 210). The principle of proportionality is closely related to the principle of distinction and also serves to protect civilians and civilian objects. This principle stipulates that parties to the conflict "shall refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated" (Knežević-Predić et al., 2007, p. 209). The principle of military necessity "permits measures that are actually necessary to achieve a legitimate military purpose and that are not otherwise prohibited by international humanitarian law" (International Committee of the Red Cross [ICRC], 2023). These principles are an integral part of the rules of international law (jus in bello) that regulate the conduct of parties in traditional armed conflicts.

However, when it comes to cyber warfare, it is questionable to what extent the aforementioned principles can be applied. Due to numerous differences compared to traditional armed conflicts, cyber warfare poses a serious challenge not only to the rules of international law jus ad bellum but also to the rules of international law jus in bello. As already mentioned, the objects of cyber warfare are information and information-communication infrastructure. During a cyber attack on the information communication infrastructure of a particular state, enormous damage can occur to its civilian population. Primarily because information-communication infrastructure is interconnected with other critical infrastructures in the state, an attack on it affects all others as well. Previous cyber attacks have shown the harmful consequences civilians can be exposed to. The outcome of cyber warfare is not only material damage but can also result in the loss of human lives. The question arises of how to differentiate between civilian and military in a situation of cyber warfare. Such a setup shows that cyber warfare is not only contrary to the principle of distinction but also to the principle of proportionality. When considering the principle of military necessity, it is unclear what measures are actually necessary to achieve a military purpose, as well as what happens if the purpose of a cyber attack is not purely military in nature.

In the Tallinn Manual on International Law (2017), which applies to cyber warfare, the principles of international humanitarian law are confirmed. According to Rule 31, "the principle of distinction applies to cyber operations" (p. 110). Rule 32 specifies that "the civilian population as such, as well as individual civilians, may not be the object of cyber attacks" (p. 113). The prohibition of attacks on civilian objects is governed by Rule 37, stating that "civilian objects may not be the object of cyber attacks. Computers, computer networks, and cyberinfrastructure may be the object of attack if they are military objectives" (p. 124). The principle of proportionality is defined by Rule 51: "Cyber-attacks which may result in incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, are prohibited" (p. 159). Since the manual is a product of the International Group of Experts, it does not compel states to adhere to these rules in the event of cyber warfare. Disagreements exist in both the international and academic communities regarding the application of international law rules to cyber warfare. Some authors argue that the principles of proportionality and distinction cannot adequately protect civilians and civilian populations in the context of cyber warfare and propose a solution in the form of adopting

Additional Protocol IV to the Geneva Conventions to regulate the field of cyber warfare (Pascucci, 2017, p. 460).

5. Conclusion

Cyber warfare as a new form of conflict today requires achieving consensus on an international level regarding its regulation. There are numerous differences compared to traditional armed conflicts, which are governed by the rules of international humanitarian law. The actors in cyber warfare are not only states or armed groups in a specific territory but can also be individuals. The targets and objectives of cyber warfare differ from those of traditional armed conflicts. Military superiority loses its significance and does not hold the same value in cyber warfare. Information and communication infrastructures in the twenty-first century gain significance that they did not previously have. Conflict has shifted from the battlefield to the digital or cyberspace, which is accessible to everyone. Remaining anonymous on this "new" battlefield creates difficulties in determining the identity of the attacker and their responsibility. Geographical proximity loses its former importance for conducting cyber operations because attacks can come from any part of the world. The weapons used in cyber warfare are entirely different from those used in traditional armed conflicts. Their cost is much lower than that of traditional kinetic weapons, making them easily accessible to anyone. The only similarity between cyber warfare and traditional armed conflicts may be their outcome, namely loss of human lives and significant material damage. There is no consensus on an international level, although states are aware of new cyber threats and the importance of cyber security today. In this regard, states develop their defensive and offensive capacities, establish various bodies dealing with this area, and adopt numerous documents at both the national and regional levels. Regarding the possibility of applying the rules of international humanitarian law to cyber warfare, there is no consensus even within the academic community. Some authors advocate for the application of jus ad bellum and jus in bello rules to cyber warfare, while others advocate for the adoption of a completely new legal framework to regulate this area. The Tallinn Manual, initiated by NATO, is of great value in considering the aforementioned issue and can serve as a model for the development of a binding international instrument. When analyzing the possibility of applying the rules of international humanitarian law to cyber warfare, it is essential to consider the differences between cyber warfare and traditional armed conflicts. The application of the jus ad bellum rules indicates that in each individual situation,

the threshold of force used during a cyber attack should be considered, while the application of the jus in bello rules shows that it is challenging to adhere to traditional principles of distinction and proportionality when it comes to cyber warfare. The best solution would be the adoption of a completely new international document regulating the entire field of cyber warfare. However, given the previous stance of states, it is questionable whether such an international instrument would be adopted at all, and if adopted, whether it might suffer the fate of the Treaty on the Prohibition of Nuclear Weapons. Certainly, states cannot act as they wish, not even in the field of cyber warfare, which is still not regulated at the international level. This is supported by both paragraph 87 of the advisory opinion of the International Court of Justice in the Case Concerning the Threat or Use of Nuclear Weapons and the Martens Clause, which is of immense importance in situations of the absence of written law.

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MOGUĆNOST PRIMENE PRAVILA MEĐUNARODNOG HUMANITARNOG PRAVA NA SAJBER RAT

APSTRAKT: Sajber rat predstavlja novi vid sukoba današnjice. Naspram ranijih tradicionalnih oružanih sukoba, sajber rat je drugačiji po sredstvima, metodama, tehnikama i akterima. Sajber ratovanje se odigrava u virtuelnom prostoru upotrebom informaciono-komunikacionih tehnologija. Akteri mogu biti države, ali i pojedinci koji mogu da nanesu ogromnu štetu protivniku. Posledice sajber napada ne moraju da budu odmah očigledne, već se one mogu dosta kasnije ispoljiti. Isto tako, rezultat sajber napada

može biti šteta materijalne prirode ili gubitak ljudskih života. S obzirom da se sajber operacije ne moraju izvoditi samo tokom trajanja sukoba, već i u periodu mira, neretko je prisutan i pojam sajber agresije. Države su svesne novih sajber pretnji te razvijaju svoje defanzivne i ofanzivne kapacitete i usvajaju strategije i doktrine koje se bave ovim pitanjem. Međutim, na međunarodnom planu ne postoji dokument koji bi regulisao otvorena pitanja u vezi sa sajber ratom jer ne postoji saglasnost među državama povodom načina njegovog regulisanja. Postoje pokušaji da se pravila međunarodnog humanitarnog prava koja regulišu oružane sukobe primene na oblast sajber ratovanja. Konsenzus u međunarodnoj zajednici nije postignut, te ova oblast ostaje neregulisana. Rad teži da ispita mogućnost primene pravila međunarodnog humanitarnog prava, odnosno pravila koja regulišu pravo na upotrebu sile u međunarodnim odnosima (jus ad bellum) i pravila koja regulišu ponašanje strana u sukobu (jus in bello) na sajber rat.

***Ključne reči**: sajber ratovanje, sajber prostor, jus ad bellum, jus in bello.*

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INTERNATIONAL HUMAN RIGHTS STANDARDS AND INVOLUNTARY PSYCHIATRIC CARE – DEVELOPMENTS AND SERBIA'S PERSPECTIVE

ABSTRACT: Unlike the interpretation of the UN Committee on the Rights of Persons with Disabilities (hereinafter: CRPD Committee), which prohibits any deprivation of liberty on the basis of mental disability, the laws of member states continue to allow and implement involuntary psychiatric measures. The recent objection by the CRPD Committee to the adoption of a legally binding document at the Council of Europe level, which aims to regulate the protection of the human rights and dignity of individuals with mental disorders, could potentially have negative consequences. At this point, a legally binding agreement is more significant than a complete prohibition on placement in psychiatric institutions without consent or the exclusion of substitute decision-makers from providing consent for treatment. This is supported by Serbian legislation, which has certain deficiencies in the procedures for the placement and treatment of individuals with mental disorders. Involuntary measures should be applied only in exceptional cases, and a legally binding document that reflects genuine state consensus could be beneficial for creating laws and ensuring protection for those subjected to involuntary psychiatric measures.

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Keywords: *human rights, consent, treatment, placement, mental disorders.*

1. Introduction

Under certain circumstances, individuals with mental health issues may be subject to treatment and placement without their consent in the majority of states, as long as protective measures are implemented. Despite significant efforts to shift away from conventional coercive approaches in the field of mental health, this issue continues to be far from being realized. The potential harm of the excessively progressive approach adopted CRPD Committee in this subject should be considered.

Council of Europe's Committee on bioethics (hereinafter: DH-BIO) adopted a Draft Additional Protocol to the Convention on human rights and biomedicine concerning the protection of human rights and dignity of persons with regard to involuntary placement and involuntary treatment within mental healthcare services in 2018 (hereinafter: Draft). The basis for the Draft was the Recommendation Rec 2004 (10) of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder (Committee on Bioethics DH-BIO, 2018).

However, there was strong resistance to the adoption of the Draft within the CRPD Committee, and human rights experts called all State delegations to object to the draft, since it maintains an approach to mental health policy and practice that is based on coercion (OHCRC, n.d.). It was also stated that "The Council of Europe now has a unique opportunity to shift away from old-fashioned coercive approaches to mental health, towards concrete steps to promote supportive mental health services in the community, and the realization of human rights for all without discrimination on the grounds of disability" (OHCRC, n.d.). Numerous European countries have implemented mental health reforms, resulting in a transition towards more person-focused and recovery-led methods, however, involuntary placement and treatment remain common, although controversial, aspects of mental health systems and form components of national laws (Mental Health Europe, Brussels, 2017, p. 18). Consequently, no specific provision of the Draft was challenged, but rather the entire system of involuntary treatment and placement in psychiatric care.

Objections to the draft also came from the Council of Europe's Parliamentary Assembly, and the Council of Europe's Commissioner for Human Rights (Mental Health Europe: Advocacy & Support for Well-being, 2024). Council of Europe's Parliamentary Assembly stated that it has serious

doubts about the added value of a new legal instrument in this field, and also questioned the compatibility of the Draft with the United Nations Convention on the Rights of Persons with Disabilities (hereinafter: CRPD). It was emphasized that although the CRPD does not explicitly refer to involuntary placement or treatment of people with disabilities, Article 14 on liberty and security of the person clearly states that a deprivation of liberty based on the existence of disability would be contrary to the CRPD (Council of Europe, 2016).

The Council of Europe's Parliamentary Assembly and the CRPD Committee's interpretation of CRPD as forbidding any deprivation of liberty based on a mental disability contradicts the fact that psychiatric involuntary measures are still widely used and permitted by member state laws (Saya et al, 2019, p. 4–7). Even when other criteria, such as risk to oneself or others, are used to justify forced admission to psychiatric care. DH-BIO postponed the adoption of the Protocol until 2021. In the same year, both the Committee on the Rights of Persons with Disabilities and the Special Rapporteur on the Rights of Persons with Disabilities strongly advised against adopting the Draft, which promotes a mental health policy and practice that is based on coercion (CRPD, 2021). At the moment, the Draft has not been adopted.

2. CRPD and involuntary treatment and placement in psychiatric care

CRPD is based on the principles of equal treatment and it is not explicitly focused on involuntary treatment and placement. Article 14 of the CRPD states that "the existence of a disability shall in no case justify a deprivation of liberty". Article 25 of the CRPD recognizes the right of persons with disabilities to the enjoyment of the highest attainable standard of health, without discrimination. In addition, health professionals need to "provide care of the same quality to persons with disabilities as to others, including based on free and informed consent".

Of 189 State Parties, just several made declarations concerning Article 14 of the CRPD. For example, Australia declared that it understands that the Convention allows for compulsory treatment of persons, including treatment of mental disabilities, as a last resort and subject to safeguards. Ireland, Netherlands, and Norway had similar declarations (United Nations Treaty Collection UNTC, n. d.). Nevertheless, other State Parties expressed their views in reports on the treaty's implementation, and they have also interpreted the CRPD in light of previous human rights standards, concluding that it

outlaws arbitrary interventions, which in their opinion include detention based solely on disability and clinical treatment that violates established medical practice and ethics (Nilsson, 2014, p. 461). On the other hand, subsequent interpretations of the CRPD by the Committee were not in line with this approach. Involuntary commitment of disabled people for health care purposes violates Article 25's principle of free and informed consent and Article 14(1)(b), which prohibits deprivation of liberty based on impairment, according to the CRPD Committee (CRPD, 2013, para. 3; CRPD 2014, Articles 12, 14 and 25; CRPD, 2015).

Concerning the non-consensual treatment during deprivation of liberty, and interpretation of Article 12 of the CRPD (equal recognition before the law), the CRPD Committee also stated that "in conjunction with the right to legal capacity on an equal basis with others, State parties have an obligation not to permit substitute decision-makers to provide consent on behalf of persons with disabilities. All health and medical personnel should ensure appropriate consultation that directly engages the person with disabilities. They should also ensure, to the best of their ability, that assistants or support persons do not substitute or have undue influence over the decisions of persons with disabilities" (CRPD, 2015, para. 41).

In the Guidelines on Article 14, the CRPD Committee explicitly stated that it is contrary to Article 14 to allow for the detention of persons with disabilities based on the perceived danger of persons to themselves or others (CRPD, 2015, paras 13–14). Deprivation of liberty based on impairment or health conditions in mental health institutions which deprives persons with disabilities of their legal capacity, also amounts to a violation of Article 12 of the CRPD, which recognizes the right of all individuals to their legal capacity (CRPD, 2015, para. 15).

Interestingly, although the position of the CRPD Committee was known at the time of the adoption of the UN Human Rights Committee General Comment No. 35 related to the Liberty and security of person, the UN Human Rights Committee reinforced its earlier position on involuntary placement. Namely, limiting liberty due to disability is only acceptable if it is necessary and proportionate to protect the individual or others from serious harm. It should only be used as a last resort, with legal safeguards, and for a limited period (HRC, 2014, para. 19). The HRC's approval of the legality of such practices under specific circumstances implies that States are unlikely to feel obligated to align laws with the CRPD interpretation (Doyle Guilloud, 2019, p. 10).

3. European standards on involuntary treatment and placement in psychiatric care

I. Biomedicine Convention

The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (hereinafter: Biomedicine Convention) is the only legally binding international act that regulates the issue of patient consent in more detail. The Charter of Fundamental Rights of the EU, however, also has a general provision related to consent, (Article 3 (2) (a), however, the doctor-patient relationship is outside the jurisdiction of the EU, which is why this provision, has a limited scope (Michalowski, 2004, p. 299). In the Biomedicine Convention, a generally accepted distinction has been made from the general rule of consent concerning the protection of minors, persons with mental disorders, and persons in emergency situations. The basic rule is that: "an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit" (Article 6 (1)). The most crucial consideration is whether the individual's condition will also impair their decision-making, in which case the laws normally allow a responsible person or authority to make decisions in their best interest. According to the Biomedicine Convention, where according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, the intervention may only be carried out with the authorization of his or her representative or an authority or a person provided for by law (Article 6 (3)). Hence, the CRPD Committee's position that state parties must not allow substitute decision-makers to consent on behalf of persons with disabilities, is in opposition to the Biomedicine Convention and the majority of state laws. While some states implemented new models of supported decision making throughout Europe, the majority of countries continued to maintain plenary guardianship regimes and practice full deprivation of legal capacity (Mental Health Europe, Brussels, 2017, p. 40).

The ability to offer informed consent is a complex question, and legal definitions of capacity to consent are sometimes unclear and vary between states. The answer to this question is heavily dependent upon the impartial assessment of the psychiatrist. It is crucial to evaluate the patient's capacity to provide informed consent, rather than making conclusions solely based on the general characteristics suggested by a particular diagnosis (Staden & Krüge, 2003, p. 43).

Importantly, the Biomedicine Convention states that subject to protective conditions prescribed by law, a person who has a mental disorder of a serious nature may be subjected, without his or her consent, to an intervention aimed at treating his or her mental disorder only where, without such treatment, serious harm is likely to result to his or her health (Article 7). The widely accepted definition of the risk of serious harm to oneself and others is limited to self-harm. The Biomedicine Convention also permits patients to be treated against their will to protect other people's rights and freedoms (Article 26).

II. The Council of Europe's Recommendations and the Draft

The basis for the Draft was Recommendation 2004 (10) of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder (hereinafter: Recommendation 2004 (10)). Among other safeguards, Recommendation 2004 (10) establishes criteria and principles governing involuntary treatment and placement, procedures for making decisions for involuntary placement and/or treatment, termination of involuntary placement and/or treatment, and obligations related to reviews and appeals. Many of these issues were addressed in earlier recommendations, as well as the later Draft (Council of Europe, 2004). The European Court of Human Rights referred to the Recommendation 2004 (10) provisions in its decisions concerning involuntary treatment and placement.[1] In comparison to Recommendation 2004 (10), which applies to people with mental disorders, the Draft's scope is limited since it excludes minors and placement and treatment in the context of criminal law procedures. This is due to the various definitions of a "minor" and their legal status between the member states. When it comes to placement and treatment in the context of criminal law procedures, additional considerations are relevant, and legal frameworks also significantly differ across member states.

The Draft defines involuntary measure, which refers to involuntary placement and/or treatment, even if the individual's legal representative is willing to authorize it. Although the draft has limited scope compared to Recommendation 2004 (10), both documents require similar criteria for involuntary placement and treatment. According to the Draft, it is necessary that: the person's mental health condition represents a significant risk of serious harm to his or her health and his or her ability to decide on placement or treatment is severely impaired, or the person's mental health condition represents a significant risk of serious

[1] *M.H. v. the United Kingdom*, Application no. 11577/06, ECHR judgment, 22. 10. 2013, par. 50.

harm to others; the placement or treatment has a therapeutic purpose; and any voluntary measure is insufficient to address the risk(s) of serious harm (CE, 2004, Articles 17–18; DH-BIO, 2018, Articles 10–11).

The requirement of a substantial risk of harm to one's health or the health of others, or the dangerousness criterion has faced criticism in the literature due to its ambiguity and potential for misuse. Predicting the dangerousness of an individual is very difficult (Nilsson, 2014, p. 474). Some even argue that it is unwise from a human rights perspective to support autocratic regimes in implementing laws that permit the detention of individuals deemed dangerous, as this legislation can be easily exploited for political purposes (Bartlett, 2012, p. 752). Nevertheless, this norm continues to be one of the key criteria in comparative law when deciding on involuntary placement.

As stated in the Draft and Recommendation 2004 (10), involuntary treatment or placement is permissible solely upon the proper evaluation conducted by a minimum of one physician possessing the necessary expertise and experience. The court or another competent authority must render the decision, taking into account the individual's opinion on the matter. The extension of an involuntary measure is possible under the same conditions (CE, 2004, Articles 20, 24; DH-BIO, 2018, Articles 12, 14). Measure's continuing conformity with the legal requirements must be reviewed at regular intervals (CE, 2004, Article 25; DH-BIO, 2018, Article 15). Also, it must be possible to appeal to a court against the measure and to request a review by a court. An appeal may also be made and a review requested by the person's representative. It must be ensured that the person subjected to involuntary measures can be heard in person, with the support of a person of trust, if any, or through a representative (CE, 2004, Article 25; DH-BIO, 2018, Article 16). The Draft and Recommendation 2004 (10), additionally guarantee the right to information, communication, and visits of the person affected by involuntary measures, and regulates use of the seclusion and restraint, and treatment with irreversible effects. Therefore, the Draft, which is mostly in line with the earlier Recommendation 2004 (10), provides important safeguards for persons affected by involuntary measures.

III. The European Court of Human Rights

The European Court of Human Rights (hereinafter: ECtHR) frequently receives applications revealing violations of the European Convention on Human Rights (hereinafter: ECHR) as a result of involuntary measures. The ECtHR in its practice developed numerous standards regarding the protection

of individuals affected by involuntary measures in psychiatric care. The Court cited the CRPD as a relevant document. However, there was never a case in the practice in which the ECtHR stated that the imposition of the involuntary measure was a violation of a human right, due to an absolute ban on involuntary placement, or concerning the involuntary treatment, due to the CRPD Committee's stance on not allowing substitute decision-makers to provide consent for persons with disabilities (although according to ECtHR their opinion must be taken in consideration). When assessing whether it is necessary to place the person in an institution, the ECtHR stated that any measure taken without prior consultation of the interested person will as a rule require careful scrutiny".[2] In this case, the ECtHR stated that the applicant detention was contrary to domestic law since the measure can only be imposed on a person if he poses a danger to society, but also stated that "such detention is open to question, particularly in the light of the provisions of Article 14 § 1 (b) CRPD".[3] However, following preliminary efforts to reconcile with the CRPD Committee, the ECtHR declined the abolishment of involuntary hospitalization (Fiala-Butora, 2024, p. 11).[4]

4. Republic of Serbia and involuntary placement and treatment in psychiatric care

In Serbian law, the matter of patient consent is regulated in line with the Biomedicine Convention (Articles 5-9 of the Biomedicine Convention).[5] The Law on Protection of Persons with Mental Disorders (hereafter: Law) provides more detailed regulations on the matter of involuntary placement and treatment. In the context of medical interventions, "an individual with a mental disorder who can make a decision and express his will and who comprehends the nature, consequences, and risks of the proposed medical measure may only undergo the procedure with his written consent." A psychiatrist evaluates the capacity of an individual to provide informed consent for the proposed

[2] *N. v. Romania, Application* no. 59152/08, ECHR judgment, 28. 11. 2017, par. 146.

[3] *N. v. Romania, Application* no. 59152/08, ECHR judgment, 28. 11. 2017, paras 158–159.

[4] "The Court considers that Article 5, as currently interpreted, does not contain a prohibition on detention on the basis of impairment, in contrast to what is proposed by the UN Committee on the Rights of Persons with Disabilities in points 6-9 of its 2015 Guidelines concerning Article 14 of the CRPD*" Rooman v. Belgium*, Application no. 18052/11, ECHR judgment, 31. 01. 2019, par. 205.

[5] Except in exceptional circumstances authorized by law, no medical procedure may be conducted without the informed consent of the patient. (Articles 15-16 of the Law on patients' rights).

medical treatment and a written report and opinion regarding capacity are appended to the medical records (Article 16 of the Law).

If an individual with a mental disorder is unable to provide consent for a proposed treatment and also lacks a legal representative or there are no means to obtain consent from a legal representative, he may undergo a medical intervention without consent under exceptional circumstances.[6] The CRPD Committee recommended the replacement of substituted decision-making with supported decision-making regimes that honor the individual's autonomy, will, and preferences and implement clear safeguards (CRPD, 2016, paras 21–22).

Concerning the placement without consent of a person with a mental disorder, a medical doctor or psychiatrist determines that an individual with a mental disorder poses a serious and direct threat to their own or others' life, health, or safety, and they may be involuntarily placed in a psychiatric institution if no less restrictive treatment options are available (Article 21 of the Law). The provision allowing a medical doctor, such as a general practitioner, to undertake an initial assessment is certainly concerning. However, when a person with a mental disorder is admitted to a psychiatric institution, the facility's council determines if the person will need additional hospital treatment or be discharged (Article 24 (4) of the Law).

The procedure for involuntary detention is delineated in the legislation (Articles 21–37). However, the lack of specific rules regarding the placement procedure is a serious shortcoming in the law (Stojanović, 2014, p. 160). Although the law acknowledges two distinct procedures – for detention without consent (Article 2(10)) and for placement without consent (Article 2(11)) – in the sections defining the meaning of the terms used, there is no explicit procedure for placement in the legislation, except a few brief references to the placement procedure. Because there are no particular procedure provisions on placement, it can be assumed that the provision linked to the prolongation of detention has the effect of placement. More specifically, the court may extend detention without consent in a psychiatric institution for up to three months from the date of the expiry of the time determined by the court's decision on detention without consent; any additional detention without the consent of a

[6] If: 1) the treatment is essential to prevent a substantial decline in his state of health; 2) medical intervention is aimed at restoring the capacity to provide consent to the proposed medical measure; 3) it is necessary to prevent endangering the life and safety of that person or the life and safety of other individuals. Healthcare facility must notify the appropriate guardianship authority and suggest that the process for designating a legal representative be initiated if an individual with mental disabilities lacks such representation (Article 19 of the Law).

person with mental disorders may be extended by a court decision for up to six months (Article 34 (2) (3)). The length of extended detention can be more closely related to the term of placement, as is customary in comparative law.

Provisions of Law on Non-Contentious Proceedings are applied to the procedure for detention in matters that are not expressly governed by the Law (Article 27 (2) of the Law). The court decides on involuntary detention after a psychiatric institution that detained a person without consent informs the court (within 24 hours of the consular examination) that the facility's council has decided on detention, along with medical documentation and reasons for detention. (Article 25(2); Article 27(1)).

The law requires the court to personally hear the person whose involuntary hospitalization is decided (Article 29); however, it is noted that there is no explicit obligation to hear the legal representative of a legally incompetent person, nor a special set of rules on representing a person who is forced to be hospitalized (Petrušić, 2013, p. 337). Also, an obligation to inform and consult a legal representative is not explicitly mentioned, although this is required in Recommendation 2004 (10) (Article 19 (2) i.), therefore, the law does not require the court to deliver the summons for the hearing to the legal representative (Petrušić, 2013, p. 340). In the Draft also, there is an obligation to "consult the representative of the person, if any" (Article 12 (2) v.).

Before deciding whether a person with a mental disorder should be detained without consent or released from a psychiatric facility, the court must seek a written report and opinion from one of the psychiatrists on the list of permanent court experts (Article 32 (1) of the Law). A significant concern regarding the involuntary hospitalization procedure is that neither the facility's council nor the psychiatrist's opinion can be contested. Courts in these proceedings are limited to determining whether involuntary hospitalization is justified on legal grounds, which creates a dilemma regarding the ability to seek compensation for damages where deprivation of liberty was unjustified, because of unfounded doctor opinion (Petrušić, 2013, p. 341). Regardless, the patient's position in a civil lawsuit against the physician is unfavorable. (Stefanović, 2020, p. 22).

The CRPD Committee recommended repealing the Law, prohibiting impairment-based detention and hospitalization, and accelerating deinstitutionalization (CRPD, 2016, paras 25–26). No substantial attention or review was given to compulsory placement and treatment in accordance with CRPD Committee recommendations. On the other hand, following a mass shooting at a primary school by a 13-year-old boy that caused nine casualties, the Ministry of Health introduced a Draft Law proposing changes

to the Law on Protection of Persons with Mental Disorders (Ministry of health, Republic of Serbia, 2023). The Draft Law applies to non-criminally liable children who, due to mental disorders, commit serious criminal offenses (prescribed prison sentence of at least ten years) and pose a substantial threat to others. Based on the Draft Law, a child can be detained in a psychiatric institution without consent but the decision is not limited in duration, although the court must review the conditions for detention and treatment every six months. In the event of a well-founded suspicion that a child in a psychiatric institution intends to acquire weapons or psychoactive controlled substances, arrange escape, plan the execution of a criminal offense, or protect the health and safety of a child or others, visits, and contacts may be temporarily prohibited, including even close family members. Security issues are subject to regulations that govern facilities for treatment and placement without consent. Fortunately, the proposed legislation was not enacted, since it creates a less favourable environment for patients below the age of 14, and it seems that the Draft Law was a hasty reaction to a tragic event.

The Law governs compulsory treatment and placement in mental institutions for those who have not committed any criminal offenses. In the case of criminal offenders, a different set of regulations is relevant, and the Criminal Code security measures (Criminal Code, 2005). According to Article 81 of the Criminal Code, the court can order compulsory psychiatric treatment and confinement in a medical institution to "an offender who committed a criminal offense in a state of substantially impaired mental capacity if, due to the committed offense and the state of mental disturbance, it determines that there is a risk that the offender may commit a more serious criminal offense and that to eliminate this risk they require medical treatment in such institution". The procedure for ordering this security measure and compulsory psychiatric treatment at liberty is regulated in the Criminal Procedure Code (Criminal Procedure Code, 2011, Articles 522-532). After nine months, the court that imposed the security measure must assess whether the need for treatment and confinement in a medical institution ceased (Article 231 (1)). There are numerous arguments in favor of limiting the measure's duration. It is difficult to justify the indefinite duration of mandated psychiatric treatment and placement for an offender with substantially diminished mental competence, regardless of the length of the prescribed prison sentence (Bejatović, 2019, p. 63).

5. Conclusion

The majority of state laws are inconsistent with the Committee on the Rights of Persons with Disabilities' subsequent interpretations of Article 14 of the CRPD. Treatment and involuntary placement continue to be regarded as essential components of psychiatric care. Given that this is the current reality, human rights violations must be prevented through comprehensive regulation, particularly given their heavy reliance on professional staff for the assessment and treatment of individuals. The ECtHR didn't uphold CRPD interpretation and its practice also demonstrates the significance of adequate laws and guidance to ensure uniformity in the implementation of involuntary measures.

Although it can be argued that progressive interpretation may ultimately result in consensus, this prospect is typically associated with well-established international bodies that safeguard basic human rights, and when the issue is closer to being agreed upon. CRPD Committee activities can contribute to the acceptance of a new perception of the human rights of people with psychosocial disabilities (Škorić & Fabijanić, 2020, p. 73). However, the CRPD Committee is a relatively new entity (formed in 2008), and interpretations that lack adequate consensus among state parties may, at this point, even undermine the CRPD Committee's authority. There is still a lack of general agreement on this issue, and deinstitutionalization requires substantial resources.

Since the majority of Council of Europe member states routinely implement and permit involuntary measures in psychiatry, the CRPD Committee's opposition to the Draft's adoption could potentially even have adverse consequences. A legally binding document at the European level, with additional safeguards and even wider application, that includes treatment and placement in the context of criminal law procedures is more valuable at this point than an absolute ban on placement or the prohibition of substitute decision-makers from providing consent to treatment. This is also supported by Serbian law, which has some flaws in procedures for the placement and treatment of people with mental disabilities. There is also a risk that fundamental human rights could be endangered by unforeseen and disturbing occurrences when the public demands an immediate response. Involuntary measures should be exceptional, and a legally binding document that demonstrates a genuine consensus among states may be advantageous in creating laws and ensuring protection for those with mental disorders subjected to involuntary measures.

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MEĐUNARODNI STANDARDI LJUDSKIH PRAVA I PRINUDNA PSIHIJATRIJSKA ZAŠTITA – RAZVOJ I POGLED IZ SRBIJE

APSTRAKT: Za razliku od tumačenja Komiteta UN za prava osoba sa invaliditetom (u daljem tekstu: CRPD komitet) prema kojem je zabranjeno bilo kakvo lišavanje slobode na osnovu mentalnog invaliditeta, zakoni država članica i dalje dozvoljavaju i primenjuju prinudne psihijatrijske mere. Nedavni prigovor CRPD Komiteta na usvajanje pravno obavezujućeg dokumenta na nivou Saveta Evrope, koji ima za cilj da reguliše zaštitu ljudskih prava i dostojanstva osoba sa mentalnim smetnjama, potencijalno bi mogao da ima negativne posledice. U ovom trenutku, pravno obavezujući sporazum ima veći značaj od potpune zabrane smeštaja u psihijatrijsku ustanovu bez pristanka ili isključivanja zastupnika od davanja saglasnosti za lečenje. Ovo je podržano srpskim zakonima, koji imaju određene nedostatke u procedurama za smeštaj i lečenje osoba sa mentalnim smetnjama. Prisilne mere se primenjuju izuzetno, a pravno obavezujući dokument koji pokazuje istinski konsenzus država može biti od koristi u kreiranju zakona i obezbeđivanju zaštite za one koji su podvrgnuti prinudnim psihijatrijskim merama.

***Ključne reči**: ljudska prava, pristanak, lečenje, smeštaj, mentalne smetnje.*

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THE USE OF PARTIAL LEAST SQUARES (PLS) IN THE STRATEGIC MANAGEMENT OF BUSINESS PERFORMANCE OF COMPANIES

ABSTRACT: The subject of this paper is the analysis of strategic management, with a focus on the impact of innovation and information and communication (IC) resources on a company's entrepreneurial strategy. The paper analyzes the management of strategic issues, with an emphasis on contingency planning and the establishment of an appropriate management system. The aim of the research is to define and measure the impact of innovation and information resources on the business performance of companies, with particular attention to small and medium-sized enterprises (SMEs) that face various challenges. The research identified a statistically significant positive relationship between the analyzed variables, concluding that innovation, IC equipment, and an entrepreneurial strategic approach are linked to the business performance of companies.

Keywords*: entrepreneurship, strategic management, innovation, business performance.*

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1. Introduction

In modern business, maintaining a leading position requires constant improvement through investment in technologies and equipment. Lack of resources can seriously hinder the ability to adapt to changes in the market. Therefore, it is crucial to invest in a stimulating work environment. Monitoring trends enables the company to recognize the need for technological innovation. Properly channeling financial resources enables effective change management and maintaining competitive advantage. Continuous improvement and adaptation to technological innovations are key to maintaining a leading position in a dynamic business environment.

A quick and coordinated reaction to changes in the business environment is crucial for the success of a company in the modern economy. The strategy must be adapted to new goals, and changes in the market, technology and capacities require planned action in order to overcome crisis moments. Strategic planning, which focuses on the growth and development of the company, enables the assessment of opportunities and the determination of strategic directions. Planning also encourages creativity and innovation in the economy.

The subject of research in the paper is the analysis of strategic management, emphasizing the impact of innovation and information and communication resources on the entrepreneurial strategy of the company. The management of strategic issues is analyzed with an emphasis on contingent planning and the establishment of an appropriate management system. The aim of the research is to define and measure the impact of innovations and information resources on the business performance of companies, with an emphasis on the SMEs.

Research has a significant role in understanding the competitive dynamics and success of companies, especially in turbulent times. Focusing on the current situation in companies and identifying ways to improve business performance further contributes to the relevance of the research.

2. Literature review

In changing business conditions, it is crucial to establish an organizational structure that enables flexibility and support for the growth and development of the company (Kovač, 2012). Making the right business decisions is essential, as mistakes lead to the loss of resources and funds. A quality accounting information system becomes the basis for effective business decision-making.

The survival and development of economic entities are directly related to the ability to adapt to changes. The development of a business strategy is crucial for achieving the company's goals and facing challenges. Managing a successful business requires continuous development of organizational capabilities and structure. Changes in the business environment often require adaptation of the organizational structure and management processes.

Strategic management is crucial for the growth and development of small and medium-sized enterprises. In a dynamic business environment, where innovation and change are constant, it becomes crucial to manage organizational culture. This need for effective management is especially evident when there is a difference between the desired culture within the company and the actual existing culture, or when employees show resistance to change (Kostić-Stanković, Makajić-Nikolić & Vujošević, 2011).

Within strategic management, the role of organizational culture is manifested through its influence on the mental models of managers at the strategic level and employees in general. Values and norms arising from the organizational culture form those mental models, significantly shaping the manager's perception of the environment and influencing the process of making strategic decisions. In addition, organizational culture plays a key role in shaping and implementing a company's strategy.

The defined strategy of the company determines the operational activities, and the long-term implementation of the strategy can affect the organizational culture. If the strategy is in line with cultural values, it will positively influence the culture through the process of institutionalization. However, if the strategy requires working in a way that is not in accordance with the culture, cognitive dissonance may occur (Janićijević, 2013). If the strategy requires changes in the values of the employees, there may be a change in the culture itself. Strategic decisions are made through the dialogue of managers, allowing the exploration of alternative opinions outside the normal operations of the organization.

An effectively designed strategy is necessary for the success of a company, and its success depends on successful implementation (Plavšić & Paunović, 2011). Management deals with different management methods, business activities, projects, human resources and organizational structure (Muković, 2015), while the organizational structure represents a dynamic system that requires adaptation to new situations (Knežević, 2008).

Innovation is key to adapting to changes in the environment. Organizations, as open systems, interact with the environment and are subject to change. Connecting human resources and business processes is becoming

an important area of the innovation. Alignment of strategy and organizational components, as well as their mutual alignment, contribute to improving performance and creating a competitive advantage.

The creativity of management and employees, together with the innovativeness of the organization, become key success factors in an intensive business environment. Different models of creativity and innovation are applied to gain competitive advantage. Networked creativity, as a structural managerial framework, encourages continuous innovation for the long-term survival of the enterprise.

In today's competitive conditions, a company's strategy represents a planning decision that determines key activities for achieving goals. An appropriate strategy enables the maximum exploitation of the company's strengths and minimization of its weaknesses in a dynamic environment.

The concept of competitiveness plays a key role in development, as it defines development goals and supports economic growth. Harmony between the economy and institutions is crucial for development, and effective coordination of innovation policy, including the participation of relevant stakeholders, from ministries to small and medium-sized enterprises, becomes imperative.

Innovations represent a key driver of economic expansion, improvement of competitiveness and encouragement of entrepreneurial spirit. The implementation of modern information and communication technologies and electronic business is becoming imperative for sustainable development.

Increased resource use and environmental impact, associated with a growing global population, indicate the necessity of transitioning from "business as usual" to more sustainable models (Bocken, Short, Rana & Evans, 2014). Strategic thinking for sustainable development, integrated with business strategy, organizational design and change, becomes key to aligning with market demands.

In order to build sustainability processes, it is necessary to develop and innovate forms of management (Broman et al., 2017). Companies, especially in countries in transition like the Republic of Serbia, should be trained for independent market performance, healthy competition and business at the international level, requiring fundamental changes and redesign of business postulates (Bešić & Đorđević, 2008).

Management, as a key influencing factor, should act as a leader and use resources, especially human resources, as key to development. The knowledge of the management team becomes crucial for running the company, and managers are faced with the tasks of planning goals, organization, evaluating

results and controlling activities (Stefanović, 2004). The issue of sustainable development becomes essential in the management of the company, requiring a holistic approach and engagement of employees in the responsible use of resources and the implementation of strategic activities aimed at the sustainable growth and development of the company. According to the aim of this paper it is of high importance the understanding of business process management in contemporary strategic management, above all in the context of growing changes and extremely dynamic and changing market environment, and providing the modern managers with insight into modern business and how to improve their business in an increasingly sharp market match (Gardašević & Radić, 2020).

3. Research methodology

In accordance with the specific subject of the research, the goal and hypotheses are set in the paper. Empirical research relies on the conclusions of "authors (Bharadwaj, 2000; Santhanam & Hartono, 2003; Tanriverdi, 2006), with the aim of establishing the relationship of the proposed variables" (Abuhteara, 2022). Setting hypotheses and creating questionnaires are the next steps, and variables are defined for measuring IT potential, entrepreneurial strategic structure and business performance. The survey is based on the literature (Aral & Weill, 2007; Ireland & Webb, 2007; Chen et al., 2014; Alegre & Chiva, 2008; Alegre, Lapiedra & Chiva, 2006) in order to assess the attitudes of ICT employees. Descriptive statistics are used, and statistical packages SPSS and PLS smart4 software are used to analyze the results.

The research was supposed to investigate the connection "between innovative and IC potential of companies, entrepreneurial strategic organization of companies and their business performance" (Abuhteara, 2022). The focus of the analysis is on the influence of innovative and IC potential on the entrepreneurial strategic structure of the company, with the desire to precisely define and measure the strength and importance of this influence on business performance. The IT variable consists of 10 indicators, the SP variable consists of 10 indicators, while the PP variable is defined with 8 variables. Statistical data processing and analysis were carried out using structural equations using the method of partial least squares (PLS-SEM). The survey collected 556 responses, which makes the sample satisfactory (Hair et al., 2014). The analysis established mean values (Mean), standard deviation (Std. Deviation), considered normality of distribution and reliability of variables (Cronbach alpha). The final PLS model consists of latent variables IT (five constructs), SP (four constructs) and PP consists of 4 reflective variables .

4. Research results

The results of the PLS analysis indicate the following:

Table 1. Descriptive values for IT, SP and PP variables

	Mean	Std. Dev.
IT1 – Our information systems are tailored to share information	3,59	1,579
IT2 – Our information system plans reflect the objectives of the business plan	3,54	1,283
IT3 – Business plans have reasonable expectations of information systems	3,45	1,223
IT4 – Our company's IT project management practices are better than our competitors	3,44	1,143
IT5 – IT security control planning in our company is better than our competitors	3,35	1,185
SP1 – Entrepreneurial way of thinking – The ability of our company is to notice changes in society as a whole, we often have ideas for new products and services.	3,71	1,228
SP2 – Entrepreneurial way – Our company never experiences a lack of ideas that can be turned into profitable products and services.	3,71	1,228
SP3 – Innovation – We constantly strive to generate new products and services.	3,64	1,543
SP4 – Competitive Advantage – All our products/services must add value or they will be rejected	3,35	1,155
PP1 – We are able to expand our existing range of products/ services using new technologies	3,74	1,17
PP2 – We are able to expand our existing range of products/ services using improved technologies	3,65	1,555
PP3 – Our company has a lower average cost of innovation projects than our competitors	3,36	1,188
PP4 – Our company has a higher global level of satisfaction with innovation projects than our competitors	3,57	1,345

Source: Abuhteara, M. A. Abd (2022)., pp. 125–128.

After starting the continuation of the analysis, 13 variables were retained in the model, with factor loading values greater than 0.7.

The reliability score of the variable loadings is shown below:

Table 2. Results of Path coefficients, values of Cronbach α, CR and AVE

IT	Var	*Path coefficients*	the results of the analysis of the reflective measurement model		
	IT1	0,811	Cronbach α 0,847	*CR* 0,894	AVE - 0,617
	IT2	0,764			
	IT3	0,859			
	IT4	0,784			
	IT5	0,702			
SP	Var	*Path coefficients*	Cronbach α 0,814	*CR* 0,814	AVE - 0,642
	SP1	0,929			
	SP2	0,956			
	SP3	0,908			
	SP4	0,900			
PP	Var	*Path coefficients*	Cronbach α 0,942	*CR* 0,944	AVE - 0,852
	PP1	0,798			
	PP2	0,841			
	PP3	0,807			
	PP4	0,758			

Source: Abuhteara, M. A. Abd (2022)., p. 129.

The assessment of the reflective measurement model shows that in the model there are variables with a load greater than 0.7; Cronbach‘s alpha is 0.814–0.942, which indicates high reliability of the variables. CR has values of 0.814–0.944 and indicate the existence of internal connection, while AVE is 0.617–0.852. It is satisfied with the Fornell Larcker criteria and HTMT values. The VIF is 1.02-1.05, the obtained values are less than 3, which means that there is no collinearity problem in the model.

The strongest correlation exists between SP and PP (0.691), while the correlation between IT and SP is weaker (0.440). R2=0.690 shows a moderate impact, that is, 69% of the dependent variable is explained by the independent variables. Effect size coefficients – f2 IT on SP is 2.232, and SP on PP is 0.786. Finally, the significance testing of the structural model and the confirmation of the hypotheses was carried out.

Table 3. Results of structural model analysis and path coefficients in the model

	β	**T-value**	***p*-value**
H 1: IT -> SP	0,831	99,876	0,000**
H 2: SP -> PP	0,663	34,887	0,000**
H 3: IT -> SP -> PP	0,551	29,130	0,000**

Source*:* Author‘s calculation.

After testing the hypotheses, it is possible to conclude (Abuhteara, 2022):

H1: There is a statistically significant and positive connection between the company‘s IT – innovative and IC potential and the company‘s entrepreneurial strategic structure – the HYPOTHESIS is confirmed.

H2: There is a statistically significant and positive relationship between the Entrepreneurial Strategic Structure of the company and the Business Performance of the company, – the HYPOTHESIS is confirmed.

H3: There is a statistically significant and positive connection between the IT – innovative and IC potential of the company and the business performance of the company, the HYPOTHESIS is confirmed.

5. Conclusion

In the concluding remarks, we point out the importance of innovation, information and communication potential and entrepreneurial organization for achieving high business performance of the company. The results of the empirical research confirm the positive connections between these factors, emphasizing the necessity of integrating innovation and information technologies into the strategic planning of the company.

With regard to the development of the entrepreneurial sector in Serbia, it is concluded that the implemented development policies have brought some progress, but that further alignment with EU standards and further improvement is crucial. Strategic planning, education and training, especially of young entrepreneurs, represent the basic guidelines for further development. It also emphasizes the need for effective representation of the interests of companies, with a special focus on small and medium-sized companies, in order to ensure competitiveness on the domestic and European markets.

Based on the empirical research, we can draw the conclusion that all hypotheses have been proven and that there is a positive statistical correlation between the examined variables.

As for the development of the entrepreneurial sector in Serbia, progress has been noted in the implementation of support policies, but the need for further alignment with EU standards is highlighted. Key guidelines for further

development include strategic planning, focus on education and training, especially of young entrepreneurs, and harmonization of regulations with EU standards. This would contribute to encouraging the entrepreneurial spirit, improving the competitiveness of the sector and would ensure the effective representation of the interests of companies, especially small and medium-sized companies, both at the national and European level.

As a proposal for future research, the need for further study of the concept of business development of the entrepreneurial sector, with special reference to harmonization with EU standards, is emphasized. These researches can contribute to a better understanding of the dynamics of the entrepreneurial sector and provide guidelines for further strategic guidance and support for this key segment of the economy.

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UPOTREBA PARCIJALNIH NAJMANJIH KVADRATA (PLS) U STRATEGIJSKOM MENADŽMENTU

APSTRAKT: Predmet istraživanja u radu jeste analiza strategijskog menadžmenta, sa naglaskom na uticaj inovacija i informaciono-komunikacionih (IK) resursa na preduzetničku strategiju preduzeća. Analizira se upravljanje strategijskim pitanjima sa akcentom na kontigentno planiranje i uspostavljanje odgovarajućeg upravljačkog sistema. Cilj istraživanja je definisanje i merenje uticaja inovacija i informacionih resursa na poslovne performanse preduzeća, s posebnim fokusom na mala i srednja preduzeća koja su izložena različitim izazovima. Istraživanjem je ustanovljena pozitivna veza između analiziranih varijabli, koja je statistički značajna, odnosno, zaključeno je da su inovativnost, IK opremljenost preduzeća i preduzetničko strategijski pristup povezani sa poslovnim performansama preduzeća.

Ključne reči: *preduzetništvo, strategijsko upravljanje, inovacije, poslovne performanse.*

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SPECIFICITIES OF THE PROPERTY RESTITUTION PROCEDURE UNDER THE LAW OF THE REPUBLIC OF SERBIA

ABSTRACT: In all the republics of the former Yugoslavia, including in the Republic of Serbia, property relations were highly dynamic, with the answer to the question of who held ownership rights frequently changing. In Serbia, among the last countries in the region, a systemic law regulating property restitution was only passed in 2011 – the Law on the Restitution of Confiscated Property and Compensation. This law, encompassing both substantive civil and procedural administrative law, introduces a special procedure for the return of confiscated property and compensation, in which, in certain areas, significant deviations from the general rules of administrative procedure are evident. This paper examines the specificities of the property restitution procedure as a special administrative procedure and highlights the key differences compared to the general administrative procedure.

Keywords: *property restitution, administrative procedure, special administrative procedure.*

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Introductory remarks

The restitution of confiscated property represents a relatively novel legal phenomenon, that is, a legal institute, which, in the first place, seems to be peculiar primarily to countries with a previous socialist system. This because the socialist system implied a significant reduction in the scope and importance of private property, while state and common social property expanded and strengthened. After the establishment of the system of competitive economy, the abolition of socialism, and an increase in the importance of private property, states found themselves in a problem regarding property rights over property confiscation from private persons, and then transferred to state or social property. The subject of this paper is the review of certain issues regarding legal regulation of the issue of property restitution in the Republic of Serbia. The paper aims to provide an overview of the key regulation of property restitution in our country, in particular to point out the differences that exist between the rules of the general administrative procedure, on the one hand, and the rules of the property restitution procedure, as a special administrative procedure, on the other hand. The methods used in this paper are the normative-dogmatic method, the legal-economic method, the historical method, as well as the deduction method, which applies general principles to specific issues.

1. A historical overview of the regulation of property restitution in the Republic of Serbia

Discussions about property restitution and its necessity, in our country, have been taking place for almost three decades. Viewed from the constitutional legal perspective, the prerequisites for privatization were created in 1988 with the adoption of the Amendment to the Constitution of the SFRY, which fundamentally changed the concept of property relations, reaffirmed the right to property, and thus opened up space for private property in all areas and activities, without limitation. Even then, it became quite certain that the right of the new owners to unlimited private property required opening the issue of returning property to its previous owners, and their heirs, which, under significantly different circumstances, was taken from them by state intervention measures (Veselinov, 2017, p. 2; Stefanović, 2008).

Although the Law on Property Restitution and Compensation (hereinafter: Law on Restitution or LR), was long anticipated, this law was not the first by which the state tried to eliminate the consequences of property confiscation

carried out during the first decades after the establishment of the socialist regime. As the concept of religion, in fact, stood in opposition to socialism, its ideals and goals, the churches and religious communities, practically, represented the enemy of the state. Consequentially, there are numerous immovable and movable properties that the state confiscated from churches and religious communities.

That is why back in 2006, *i.e.*, a full 5 years before the law regulating general restitution was adopted, the *Law on the Restitution of Property to Churches and Religious Communities* was passed which came into effect on October 1, 2006. This regulation is significantly narrower in scope, compared to the general Law on Restitution but, unlike the Law on Restitution, faced no major problems in its enforcement. This regulation was, as can be deduced from the name itself, of limited scope and referred only to property that was confiscated from churches and religious communities, *i.e.*, legal entities, *i.e.*, parties to the proceedings could only be churches and religious communities. The law limited the possibility of submitting a claim for the return of property to 2 years, *i.e.*, until September 30, 2008.[1] What turned out to be a good solution in this law was that the legislator resorted to a broad definition of regulations according to which property was confiscated. Namely, Article 3, Paragraph 1, Item 1 of this law stipulates that the regulations on confiscation of property *"*means the regulations of AVNOJ, DFY, FNRY and SFRY, as well as regulations of the Republic of Serbia and the SR of Serbia after the Second World War, according to which the state, for its own benefit or for the benefit of other legal or natural persons, confiscated property from churches and religious communities*"*, while in the general Law on Restitution, the legislator resorted to listing the regulations on the basis of which the confiscation of property had taken place.[2] On October 6, 2011, sixty-six years after the first confiscation of property following the Second World War, and five years after the adoption of the Law on the Restitution of Property to Churches and Religious Communities, a Serbian law on general restitution took effect.

[1] In essence, the same period of two years was also contained in the Law on Restitution, although the start date was not definitively defined but stipulated that the claim must be submitted within 2 years from the publication of the public invitation from the Agency for Restitution, on the website of the ministry in charge of financial affairs (Law on Property Restitution and Compensation, 2011, Article 42).

[2] Samardžić correctly observes that the effort to unnecessarily limit the application of the law by the "initial" date of confiscation (March 9, 1945), on the one hand, and by the list of regulations according to which confiscated property can be subject to restitution, on the other hand, indicates a rather restrictive attitude of the legislator in relation to general restitution and, in a rather skilful way, in the language of nomotechnics (Samardžić, 2012, p. 450).

According to the express provision of Article 1 of this law, this law regulates the, "terms, method and procedure for the restitution of and compensation for the property which was confiscated on the territory of the Republic of Serbia with the application of regulations on agrarian reform, nationalization, sequestration, and other regulations, on the basis of nationalization acts, after **9 March 1945**, from natural persons and legal entities and transferred into national, state, social or cooperative property (hereinafter referred to as "property restitution"), (underlined by author)". On the other hand, Article 2 of the Law on Restitution foresees, according to the *numerus clausus* principle, an exhaustive list of regulations according to which property was confiscated and whose return was made possible by the Law on Restitution.

2. On the relationship of the property restitution procedure and the general administrative procedure

It could be said that the property restitution procedure represents a special administrative procedure[3], the subject of which is the resolution of an administrative matter related to deciding on the return of property rights over previously confiscated property, as one of the forms of administrative matters. The property restitution procedure is being conducted with a purpose of determining ownership rights, *i.e.*, the return of previously confiscated property to the former owner or his heirs, or for the purpose of determining monetary compensation in case of impossibility of natural restitution. Having that in mind, the relationship between the property restitution procedure and the general administrative procedure is, by its very nature, a relationship between the special and the general.

The need for specialized administrative procedures is required by the broad range of administrative areas and their unique characteristics. Consequently, the Law on General Administrative Procedure (LGAP) aims to establish minimum rules common to all administrative activities and procedures. However, even the most comprehensive legislation on general administrative procedures cannot account for every specific peculiarity of various specialized procedures, and our legislator and the LGAP are no exception.[4] Therefore, LGAP, in its Article 3, allows for certain issues of (special) administrative procedure to be regulated by a special law, but only if that is necessary in specific administrative area, and if it is in accordance with the basic principles determined by LGAP,

[3] See in detail about special administrative procedures in: Lončar, 2016, pp. 1231–1249.
[4] On the shortcomings of the LGAP, see in detail Milkov, 2017.

and if such special rule do not reduce the level of protection of rights and legal interests of the parties guaranteed by the LGAP

As we can see, LGAP itself foresees for the possibility of deviating from its provisions. However, the enactor of the LGAP did not leave the next legislative majority, nor to the executive branch, a complete freedom to prescribe deviations at their discretion. In that sense, the enactor of the LGAP set relatively clear conditions that must be met for a deviation from the rules of general administrative procedure to be considered as permitted and justifiable. Therefore, the legislator set a confines within which every future legislator and executive must move when they prescribe rules for special administrative procedures.[5] For such special administrative activities and areas for which a deviating procedure has been prescribed by special legal procedural provisions of the law, those provisions are followed and those provisions "must be in accordance with the basic principles established" by LGAP (Dimitrijević, 2019, p. 232). Firstly, as explicitly stated in Article 3 of the LGAP, special administrative procedures cannot be exclusively governed by separate legislation; instead, only certain administrative procedural matters may be regulated differently and separately. The following limitation refers to the act, in the formal sense, and the adopter of that act, who can define rules for a special administrative procedure. Only the formal enactment of law by parliament can authorize deviations from the general administrative procedural rules. This means that any exceptions or modifications to these rules must be explicitly established through legislative processes overseen by the parliament as the legislative body, which must be considered as reasonable and justified, bearing in mind that it was the parliament who defined the rules of general administrative procedure, thus only it can prescribe deviations from the same. In addition, as Milkov (2017) correctly observes, "the legislative body is the most democratic body, *i.e.*, the state body, and as the rules of general and special administrative procedure cover a wide range of people, *i.e.*, almost every citizen, only the representative body is authorized to adapt the general administrative procedure to the specifics of certain administrative areas, when necessary" (p. 76).

[5] At this point, the author points out the existence of unresolved issues regarding the concept of "systemic laws", which was created through the practice of the Constitutional Court (see: IUz-185/2018, Dissenting opinion of Judge Korhetz, T.), which raised one varient of law above all other laws making it as some kind of "supra law", being directly below the Constitution, but above other laws. However, the intention of the drafters and enactors of the Constitution on the possibility of the laws of different levels cannot be found nowhere in the text of the Constitution, neither explicitly nor implicitly.

Therefore, Article 3 of the LGAP enables the introduction of special rules for special administrative procedures. However, only with the adoption of the corresponding law, which deviates from the rules of the LGAP, will this article be implemented. In this sense, Article 11, Paragraph 1 of the Law on Restitution prescribes that the procedure according to the property restitution claim will be carried out according to the provisions of that law, while the following sentence read that, *"*the provisions of the law governing the general administrative procedure shall be applied to matters not regulated by this law[.]*"* This provision establishes a two-way connection between the LGAP and the LR, because the LGAP imposes frameworks within which deviations from the general administrative procedure are permitted, while the LR directly and unequivocally returns the referral back to the LGAP for all issues that are not expressly regulated by that law.[6]

The Law on Restitution prescribes certain deviations from the rules of the general administrative procedure, and this paper points out that these deviations include rules regarding the parties to the procedure, deadlines for decision-making, the jurisdiction of authorities, and other issues that, as *lex specialis*, have been provided for by the Law on Restitution.

3. Deviations from the rules of the Law on General Administrative Procedure contained in the Law on Restitution

Therefore, when conducting the property restitution procedure, the special legal rules contained in the Law on Restitution are primarily applied, while the rules of the general administrative procedure are applied as secundary. In this sense, special rules related to the property restitution procedure are contained in Chapter Four of the Law on Restitution, and includes the provisions of Articles 39–50. In terms of scope, this is certainly one of the less extensive derogations of the rules set forth in LGAP.[7]

[6] The discrepancy between special laws regulating specific administrative areas and the provisions of the Law on General Administrative Procedure (LGAP) remains unresolved, despite the deadline for harmonizing these special regulations with the LGAP having expired in June 2018.

[7] For example, the tax procedure is almost entirely regulated by a special law – the Law on Tax Procedure and Tax Administration – with legal solutions that are very often diametrically opposed to the provisions of the LGAP, which certainly calls into question the justification of such regulation bearing in mind that Article 3 of the LGAP foresees the possibility of the partial regulation of a special administrative procedure, and not the whole, as well as the provision according to which special regulations cannot reduce the level of protection of rights and legal interests guaranteed by the provisions of the LGAP.

At this point, we should recall the provision of Article 3 of the Law on General Administrative Procedure which allows for special rules for special administrative procedures, but only on the condition that the deviation is, "in accordance with the basic principles determined by this law", and that such deviation, "does not reduce the level of protection of the rights and legal interests of the parties guaranteed by this law." Therefore, from a strictly formal point of view, the special rules for the property restitution procedure should not go against the basic principles of the LGAP, nor should they violate the level of protection of the rights and legal interests of the parties guaranteed by the LGAP. However, as will be seen below, the principles contained under Article 3 of the LGAP have not always been respected.[8]

3.1. Parties to proceedings regarding the claim for property restitution

Starting from the general definition of a party from Article 44, Paragraph 1 of the LGAP according to which, "a party in administrative proceedings is a natural or legal person whose administrative matter is the subject of administrative proceedings and any other natural or legal person whose rights, obligations or legal interests can be affected by the outcome of the administrative procedure", it can be seen that the determination of a party, in terms of the Law on Restitution, is quite narrow. Namely, the Law on Restitution stipulates that, "A party in the proceeedings shall mean a person on whose request a process has been initiated, or a person who has a legal interest, an obliged party as well as the State Attorney of the Republic." (Law on Restitution, Article 39). However, this norm is not complete in terms of the answer to the question of who can be a party to the request for the property restitution procedure, because the provision is partly of a blanket character. In order to get an answer to this question it is necessary, through a systematic interpretation, to look at all the provisions of the Law on Restitution, especially the provisions of Article 5 of the Law on Restitution, which stipulate that the right to property restitution or compensation is granted to:

[8] Bearing in mind the fact that the LGAP was adopted five years after the enactment of the Law on Restitution, one could argue that harmonization between these special rules and the rules of the LGAP cannot be expected. However, this point of view cannot be accepted for the simple reason that the legislator himself, in enacting the LGAP, prescribed in Article 214 of the LGAP that special laws regulating certain issues of administrative procedure would be harmonized with the LGAP by June 1, 2018, at the latest. As it has turned out, this deadline passed and many special laws regulating certain administrative procedural issues remained unaligned with the provisions of the LGAP.

1. A domestic natural person who is the former owner of the confiscated property, and in the event of their death or declaration of death, their legal inheritors, as determined by inheritance regulations in the Republic of Serbia and the provisions of the Law.
2. An endowment whose property has been confiscated, or its legal successor.
3. The former owner who recovered their former property that was confiscated based on an encumbered legal transaction.
4. A natural person who concluded a sales agreement with the state authority between 1945 and 1958, if court proceedings determine that the person was harmed by the purchase price; this person shall have the right to compensation reduced by the amount of the paid purchase price, in accordance with the Law.
5. A natural person who is a foreign citizen, and in the event of their death or declaration of death, their legal inheritors, based on the principle of reciprocity.

Therefore, the right to property restitution is almost entirely reserved for natural persons, while legal persons, with the exception of endowments, remain denied the right to claim property restitution or compensation. Apart from the question of the constitutional justifiability of such approach, bearing in mind the provisions on the prohibition of discrimination and equality under law[9] it seems completely clear to us that this determination significantly narrows the definition of a party defined by the provisions of the LGAP, and thus reduces the level of protection of rights and legal interests of all legal entities that remained outside the definition of the Law on Restitution, which in itself is contrary to Article 3 of the Law on General Administrative Procedure. In the specific case, with the consistent application of the principle of "systemic law", the Constitutional Court would have to, even though such jurisdiction was not afforded to it by the Constitution, establish that the provision of Article 39 of the Law on Restitution was inconsistent with the provisions of Articles 3 and 44 of the Law on General Administrative Procedure, because it reduces the degree of protection of rights and legal interests guaranteed by the Law on General Administrative Procedure.

A special curiosity of the provision of Article 39 of the Law on Restitution is the stipulation that the party in the proceedings is also the State's Attorney

[9] What the Constitutional Court of Serbia has already declared and what has already been discussed in the previous footnotes.

of the Republic.[10] Namely, since this body is not one of the listed subjects who can submit a claim for property restitution, nor would this, by the nature of the matter, be logical, and since the essential role of the state attorney's office is to represent the property rights and interests of the Republic of Serbia, it is the only logical and a legally acceptable conclusion that the state attorney appears as an opposing party in the proceedings, standing opposite the party that submitted the claim. From this provision, it is only possible to conclude that the property restitution procedure can be conducted as a multi-party administrative proceeding – when the State Attorney's office decides to act in a specific case on behalf of the Republic of Serbia. Bearing in mind the fact that the case is decided by the Agency for Restitution, as the acting authority, with the application of relevant regulations and based on the established factual situation, and bearing in mind that the Republic itself adopted this regulation for the purpose of returning confiscated property, with natural property restitution enjoying priority over monetary compensation (as a mean of property restitution), and as it is in the interest of the Republic that restitution procedures be completed as soon as possible, it is not entirely clear why it was necessary to enable the intervention of the State Attorney's office and prevent the Agency for Restitution from quickly, in shortened examination procedures conducted within a reasonable period of time, deciding on the submitted claims.

3.2. Initiating a property restitution procedure and submitting a claim

The question procedure being initiated is also differently regulated in relation to the general rules of the LGAP. Although it can be considered that the restitution procedure is fully regulated by the Law on Restitution, the provisions contained in the LGAP should also be taken into account given the fact that certain ways of initiating this procedure, which have been prescribed by the LGAP, have been excluded by the LR. Namely, as a general rule, Article 90 of the LGAP regulates the initiation of administrative proceedings. Thus, Paragraph 1 of this Article stipulates that the procedure, "is initiated at the request of the party or ex officio", while Paragraph 2 stipulates that, "the

[10] The Law on Restitution mentions the Republic's public attorney, although that body has not existed for a long time. In its place, a new body was established – the State Attorney's Office of the Republic of Serbia, *i.e.*, the State Attorney of the Republic of Serbia.. Bearing in mind what has been said, in this paper the term corresponding to current legislation will be used – state attorney's office, instead of the legal term. This is just one more example in a series of inconsistencies between the Law on Restitution and other current regulations.

procedure is initiated ex officio when it is prescribed by the regulation or when the authority determines or learns that, considering the factual situation, it is necessary to protect the public interest."[11]

In addition, the LGAP provides for another way of initiating administrative procedure. Namely, LGAP, in its Article 94, foresees for the option of initiating the procedure with a public invitation. Thus, according to Paragraph 1 of this Article the authority can initiate proceedings with a public invitation when dealing with a large number of persons who are unknown or cannot be identified, if these persons may have the capacity to be parties to the proceedings, and the authority's request is essentially the same for all of them, and according to Paragraph 2 the procedure is initiated when a public invitation is published on the authority's web presentation and notice board. However, the Law on Restitution itself does not foresee for the possibility of such an initiation of a property restitution procedure, but still contains a reference norm to the LGAP.

In such a state of affairs, the question can be raised as to whether the property restitution procedure can, in some cases, be initiated *ex officio* or by public invitation. The answer to this question is not simple or uniform and, in our opinion, the activity of the authority, which *ex officio* publishes a public invitation and which a party responds to by submitting a claim, is necessary for the restitution procedure to commence. Thus, each of the elements: 1) the activity of the acting authority *proprio motu*, 2) public invitation, and 3) the activity of the party – submission of a claim, represents, individually, *conditio sine qua non* for initiating and conducting restitution proceedings.

Namely, the Law on Restitution foresees and insists, formally, on only one way of starting the property restitution procedure: at the request of the party. Contrary to the usual way of prescribing, nowhere in the Law on Restitution can one find an express provision that would state the manner of initiating the procedure, and nowhere does the legislator explicitly state the exclusion of other ways of initiating the procedure. However, with a systematic interpretation of the Law on Restitution,[12] it will be clear that the only way to formally initiate the procedure is a corresponding claim by an applicant. However, there is one (pre)condition for claim submission. Article 40, Paragraph 2 of the Law on Restitution stipulates that the Agency

[11] For the critic of the solution and clumsy legislative approach see Milkov, 2017, p. 169.

[12] Article 11 addresses, "The procedure according to the claim shall be carried out..."; Article 39 states that, "the party in the proceedings is the person at whose claim the proceedings were initiated..." From this follows that the restitution procedure is, in fact, a procedure that is initiated based on a claim submitted by the applicant.

shall announce a public invitation for the submission of claims for property restitution in at least two newspapers distributed throughout the Republic of Serbia, as well as on the official website of the Ministry of Finance and the Agency, within 120 days from the date of entry into force of the Law, while the interpretative provision of Article 3, Paragraph 1, Item 5 of the Law on Restitution prescribes, "under the term "Claim for property restitution", i.e., "compensation"(hereinafter referred to as the "claim") shall mean a claim which a party authorized by the Law submits to the Agency on the basis of an announced public invitation." From the above, it is clear that in order to submit a claim, it is necessary for the acting authority – the Agency for Restitution – to previously publish a public invitation for the submission of claims. This is because the Agency for Restitution is entrusted with the implementation of the entire property restitution procedure.

From the above, it can be concluded that, in this particular case, it is a *sui generis* way of initiating administrative proceedings. This is due to the fact that the action of any subject, by itself, is not sufficient – if the Agency for Restitution publishes an invitation, and the entitled persons do not submit a claim, the procedure cannot be initiated. On the other hand, if an entitled person submits a claim without a public invitation being published beforehand, the restitution procedure cannot be initiated. Therefore, both conditions must be met. Strictly speaking, although it is an unusual choice of the legislator, it could not be said that this manner of initiating the procedure derogates rights or reduces the level of protection as foreseen by the LGAP. This *a fortiori* since the LGAP itself, under Article 90, Paragraph 5, prescribes that the proceedings cannot be initiated *ex officio* in administrative matters in which, by law or nature of the matter, the procedure can only be initiated at the request of an entitled party. Thus, it is not unreasonable to consider that the previous condition of publishing a public invitation is a justified and legitimate manner of the initiation of the property restitution procedure.

When it comes to the claim itself, its form and elements are established in advance, while the method and procedure for receiving and processing the claim, as well as the list of post offices where the claim can be submitted, are to be defined by the finance minister (Law on Restitution, Article 42).[13]

According to Article 42, Paragraphs 1 and 2 of the Law on Restitution, the claim with corresponding appendices must be submitted to the acting regional unit of the Agency for Restitution via the post office, within two

[13] For a detailed description of the necessary elements of the claim and appendices, see Article 42, Paragraph 3-5 of the Law on Restitution.

years from the date of publication of the public invitation on the website of the Ministry of Finance.

As nothing else is stipulated in the Law on Restitution itself, the provision of Article 91, Paragraph 1 of the LGAP has to be applied, according to which the procedure is initiated by the entitled party's claim when the authority receives it.

If the claim is not submitted on the appropriate form, that is, if it is not submitted with all the necessary elements and with all the necessary attachments, such a claim is, in accordance with the provisions of Article 43, Paragraph 1 of the LR, dismissed as incomplete. In that case, the applicant can submit a new claim if the period of two years from the date of publication of the invitation has not expired (Law on Restitution, Article 43, Paragraph 2). An appeal is not permitted against the act dismissing the request as incomplete, but an act can be challenged before the Administrative Court (Law on Restitution, Article 43, Paragraph 3).

3.3. The deadline for rendering a decision based on a claim

The Agency for Restitution decides on the merits of a claim with a decision on the return of property or compensation.[14] The Agency for Restitution must issue a decision on the merits of the claim within 6 months of receiving the complete claim, with the exception that this deadline can be extended by another 6 months in particularly complex cases (Law on Restitution, Article 46).

Prescribing such long deadlines for decision-making, in principle, is not in accordance with the provisions of Article 3 of the LGAP, in terms of Article 145 of the LGAP. Namely, Article 145, Paragraph 2 of the LGAP prescribes that when the procedure is initiated by an entitled party, and when an administrative matter is decided in the direct decision-making procedure, the deciding authority is required to issue a decision no later than within 30 days from the initiation of the procedure, while Paragraph 3 of the same Article stipulates that when the procedure is initiated by the claim of an entitled party and when the administrative matter is not decided in the direct decision-making procedure, the deciding authority is required to issue decision no later than 60 days after the initiation of the procedure.

[14] For a detailed overview of the elements contained in the authority's decision, see Article 47 of the Law on Restitution.

These two provisions do not contain an exception. It implies that the decision will be made and that the party will be informed about the same within 30 or 60 days from the initiation of the procedure, which, as we pointed out earlier, is being counted from the date of submission of a proper claim.

Since the deadlines prescribed in the Law on Restitution are significantly longer than those prescribed by the LGAP, it must be concluded that the special norm derogates the protections, *i.e.*, lowers the level of protection of the party's rights and legal interests guaranteed by the LGAP. Therefore, any potential assessment of the compliance of these provisions with the provisions of the LGAP would have to conclude with finding of a violation.

3.4. Appeal in the property restitution procedure and other legal remedies

As part of the basic human right, the right to a legal remedy envisaged by the Constitution of the Republic of Serbia and the European Convention on Human Rights, the right to appeal is recognized to any applicant who believes that a right has been denied or violated during the property restitution procedure by the adoption of a decision on the return of property or compensation. In contrast to the rules of the general administrative procedure contained in the LGAP, which prescribes the right of raising objections and filing of appeals, tin respect of the Law on Restitution, an appeal is the only legal remedy available to the party in property restitution procedure.

An appeal during the restitution procedure means a legal remedy by which an entitled person (applicant, obligee and state attorney; Law on Restitution, Article 48, Paragraph 1) disputes the legality or regularity of a first-instance decision of the Agency for Restitution made during the property restitution procedure. An appeal, therefore, can only be filed against those decisions that pertains to the merits of the claim.

Similar to the rules of the general administrative procedure and according to the provisions of Article 47 of the Law on Restitution, an appeal can be filed against a first-instance decision, unless the law prescribes otherwise, but, although the Law on Restitution does not expressly provide for the same, an appeal can also be filed in the event that, at the request of the applicant, the decision was not rendered within the prescribed time period. This is so called "silence of the administration", which pertains to the inactivity of the acting body in respect filed claim, "which entails numerous consequences" (Torbica, 2021, p. 143).

An appeal can be filed within 15 days from the date of receipt of the decision (Law on Restitution, Article 48, Paragraph 1). An appeal filed against a first-instance decision is decided by the Ministry for Finance (Law on Restitution, Article 48, Paragraph 2), which, we believe, should be understood to mean that appeals are decided by the finance minister, or a person authorized for that purpose by the finance minister.

However, the Law on Restitution also provides specific rules regarding appeals in property restitution proceedings, which, it can be said, significantly deviates from the rules contained in the LGAP. Namely, the Law on Restitution prescribes a less favorable provision for the party which refers to the deadline for the decision of the second-instance body, ignoring the framework established by Article 3 of the LGAP. Namely, as a rule of general administrative procedure, Article 174 of the LGAP stipulates that a decision on the appeal shall be issued without delay, and no later than within 60 days from the date of submission of an appeal, unless a shorter period has been prescribed by law. Therefore, this provision foresees the only possibility for a separate regulation to provide a shorter deadline for deciding on an appeal, which is also in accordance with Article 3 of the LGAP. However, as Article 48, Paragraph 2 of the Law on Restitution stipulates that the finance ministry "must decide on the appeal within 90 days from the date of receipt of the appeal", this provision is inconsistent with Article 3 of the LGAP in terms of Article 174 of the LGAP, because prescribing a longer deadline for deciding on an appeal significantly reduces the degree of protection of the rights and legal interests of the parties guaranteed by the LGAP, and within which limits special regulations must operate.

In addition, since the Law on Restitution does not provide an explicit rule regarding the suspensive effect of an appeal, the general administrative procedure rule from Article 154 of the LGAP has to be applied, according to which an appeal, unless otherwise prescribed, has a suspensive effect. Therefore, it must be concluded that, in the absence of a separate norm, the general rule must be applied, and the appeal in the property restitution procedure has a delaying effect, which could be criticized only in case when the Agency accepts the claim and the appeal is filed only by the State Attorney's office.

What is commendable is that the possibility of challenging the final administrative decision before the Administrative Court has been foreseen, as urgent (Law on Restitution, Article 48, Paragraph 3). Nevertheless, we believe that the legislator, perhaps bearing in mind the importance of the issue to be decided during the property restitution procedure, should have foreseen

the possibility of enabling an extraordinary legal remedy in an administrative dispute – a request to review a court decision against a decision of the Administrative Court.

4. Conclusion

It is true that the Law on Restitution contributed to a lot to the correction of the historical injustice that was committed against numerous subjects, by confiscating their private property with or without legal basis. However, this law introduced certain problems into our society and the domestic legal order.

Starting from its subject, this paper has pointed out the key problem of the restitution procedure, which represents the problem of the relationship between the rules of the general administrative procedure and the special property restitution procedure. Namely, the main issue stems from the legislator's ambitious goal in the 2016 "new" LGAP, which sought to create minimal protection for the rights and legal interests of parties in proceedings through a one single regulation, and to prevent any weakening of these protections with special legislation. Moreover, the "new" LGAP was adopted five years after the Law on Restitution. Consequently, in the property restitution process, there are many provisions that address specific administrative procedural issues differently, often to the detriment of the parties involved.

Due to the unique position imposed by the Constitutional Court's opinion on so-called "systemic laws," a reasonable legal method must be found to simultaneously apply conflicting provisions from different laws, resolving the conflict on both *in abstracto* and *in concreto* levels. This author, guided by the protective legislative intent behind the Article 3 of the LGAP, suggests that, as a starting principle for resolving this issue, all conflicting norms of the general and special administrative procedures should be interpreted and applied in the manner most favorable to the party involved.

De lege ferenda, maximum efforts should be made to harmonize the rules of general administrative procedure with special administrative procedures, particularly the property restitution procedure, which already should have been done by the June 1, 2018. It is possible that some subsequent legislator will be more consistent and fairer. In addition, the legislator should correct the injustice done to legal entities (legal persons) as former owners, with the exception of endowments, and enable them too, *i.e.*, the return of confiscated property to its legal successors, or to provide them with monetary compensation. Finally, bearing in mind the importance of the matter to be decided on during the property restitution procedure, it would not be unreasonable to envisage

the possibility of enabling an extraordinary legal remedy in an administrative dispute. This is the only way, we believe, that the state would correctly solve the problem of returning to legal and natural persons property confiscated during the socialist system.

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SPECIFIČNOSTI POSTUPKA RESTITUCIJE U PRAVU REPUBLIKE SRBIJE

APSTRAKT*:* Na prostorima svih republika bivše Jugoslavije, pa tako i na prostoru Republike Srbije, pitanje svojinskih odnosa je bilo izrazito dinamično, te se odgovor na pitanje titulara prava svojine često menjao. U Srbiji se, među poslednjim zemljama u regionu, tek 2011. godine doneo sistemski zakon koji reguliše restituciju – Zakon o vraćanju oduzete imovine i obeštećenju. Ovim zakonom, koji obuhvata materijalno građansko i procesno upravno pravo, predviđa se poseban postupak vraćanja oduzete imovine i obeštećenja, gde se, u pojedinim oblastima, u znatnoj meri odstupa od opštih pravila upravnog postupka. Ovaj rad ispituje osobenosti postupka restitucije kao posebnog upravnog postupka i ukazuje na ključne razlike u odnosu na opšti upravni postupak.

Ključne reči: *restitucija imovine, upravni postupak, posebni upravni postupak.*

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CRIMINAL OFFENSES AGAINST OFFICIAL DUTY WITH A FOCUS ON THE OBJECT OF THE CRIMINAL OFFENSE

ABSTRACT: The very title of the group of criminal offenses against official duty reveals their object of protection, which is the conscientious and responsible performance of official duties. However, these criminal offenses endanger various protected values, such as citizens' freedoms and rights, their physical and psychological integrity, their property, and others. In this context, the distinction between the object of the act and the defined object of protection for this group of criminal offenses becomes evident. This means that it is necessary to differentiate between the immediate object targeted by individual criminal offenses within this group, the so-called object of attack, and the established object of protection, which is the general value being safeguarded. The subject of this paper is the analysis of legal norms related to individual criminal offenses with a focus on distinguishing between the object of protection and the object of the act. In this regard, we will compare the elements of certain criminal offenses against official duty, primarily those in which the objects of the act differ, while the object of protection, according to their classification, remains the same. The aim of the paper is to determine whether the existing criminal offenses against official duty, with reference to the object of the criminal

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offense, are properly systematized within this group of criminal offenses, and to explore possible ways to address the identified shortcomings.

Keywords: *criminal offense, official duty, object of protection, object of the act, bribery.*

1. Introduction

As the basic purpose of criminal law is its protective function, it is manifested by prescribing certain behaviors as criminal offenses, criminal sanctions for those offenses, and conditions for their application (Stojanović, 2023). As such, it consists in the protection of "fundamental rights and freedoms of man and other basic individual and general values established by the constitution and international law" (Article 1, paragraph 2 of the Criminal Code of the Republic of Srpska [CC RS]). From this, the characteristics of the protective function of criminal law and the methods of its realization emerge (Babić, 2008).

In connection with this is the systematics of a special part of the criminal code, in which all punishable behaviors are categorized into groups of criminal offenses based on their similarity, primarily according to the object of protection, which is linked to the protective function, which is the fundamental function of criminal law (Stojanović, 2023). Although the term "protective object" is more commonly used in theory, we accept the view that it is more appropriate to use the term "object of protection" because this object of the criminal offense is what is being protected, not the object used to protect something else (Stojanović, 2023, p. 113). Besides the general object of protection, which provides criminal law protection to the goods encompassed by all prescribed criminal offenses, the group object of protection is also significant. It includes the goods and rights that are common to a specific group of criminal offenses. These are multiple related specific objects that form the basis for the creation of more or less homogeneous groups of criminal offenses, which is legislatively expressed through separate chapters or narrower groups within a single chapter (Babić, 2021, p. 120).

One of the specific groups of criminal offenses includes criminal offenses against official duty[1]. The systematization of individual criminal offenses into

[1] In the CC RS these criminal offenses are systematized in Chapter XXV titled "Criminal Offenses Against Official Duty." Likewise, in other criminal codes in Bosnia and Herzegovina, the aforementioned group of criminal offenses is also systematized.

this group[2] is directly related to the group object of protection, i.e., all criminal offenses in this group infringe upon or endanger the same protected value, which is the breach of official duty committed by public officials through the unlawful use of their official position and the powers that arise from it (Babić, Filipović, Marković, Rajić, 2005). Unlike this object of protection, which represents a certain abstract value, there is also the object of the act, which is always a material, physical object on which the act of the specific criminal offense against official duty is carried out. This refers to the specific object of attack that is directly endangered or violated, or over which the act of committing the criminal offense is undertaken (Babić, 2021; Stojanović, 2023). The object of protection and the object of the act differ in these criminal offenses, and it is important to distinguish between them for several reasons. For example, in the criminal offense of Bribery (Article 319 CC RS), the object of the act is the official action, while in the criminal offense of Embezzlement (Article 316 CC RS), the object of the act is the entrusted money, and in the criminal offense of the Violation of Human Dignity by Abuse of Official Position or Authority (Article 329 CC RS), it is the physical or psychological integrity of the person, i.e., the passive subject. At the same time, the criminal offense of Abuse of Office or Official Authority (Article 315 CC RS) represents the fundamental criminal offense for the majority of criminal offenses against official duty. It is also a general offense since a large number of criminal offenses (not only from this chapter) represent its specific forms, and it is actually a subsidiary criminal offense (Delić, 2018). Thus, these criminal offenses can be classified as general criminal offenses against official duty, which means they can be committed in the performance of any official duty (e.g., abuse of official position or authority). In contrast, specific offenses can only be committed in the performance of a particular official duty, which is why a specific official appears as the perpetrator (e.g., illegal release of a detainee). In this context, true criminal offenses against official duty can only be carried out by official or responsible persons, and only in the performance of their official duties or public authorities or in connection with them. On the other hand, false criminal

[2] These are the following criminal offenses in the CC RS: Abuse of Office or Official Authority (Art. 315), Embezzlement (Art. 316), Fraud in Office (Art. 317), Unauthorized Use of Official Property (Art. 318), Acceptance of Bribes (Art. 319). , Bribery (Art. 320), Trading in Influence (Art. 321), Unconscionable Work in the Service (Art. 322), Disclosure of Official Secrets (Art. 323), Improper Use of Budget Funds (Art. 324), Illegal Granting of Benefits to Economic Entities (Art. 325), Illegal Collection and Disbursement (Art. 326), Illegal Release of a Detainee (Art. 327), Forcing Out Statements (Art. 328), Violation of Human Dignity through Abuse of Office or Official Authority (Art. 329), Illegal Appropriation of Items During a Search or Execution of an Order (Art. 330).

offenses, unlike true ones, can be committed not only by official persons but also by any other individual who commits the act outside the scope of their official duties or in connection with the performance of such duties (e.g., giving a bribe or trading in influence) (Babić, 2008; Bajičić, 2023).

This is the subject of this paper. Specifically, we start from the position that the accurate and clear determination of the object of the criminal offense is of particular importance for the interpretation and application of criminal law. This becomes even more evident when clarifying ambiguous questions that arise in distinguishing between individual criminal offenses, not only within the same group of criminal offenses but also among other criminal offenses. Furthermore, this issue is important for the legal qualification of incriminated behavior, as well as later when determining the sentence for the perpetrator of the specific criminal offense (Babić, 2021). In this regard, we will conduct a legal analysis of the group of criminal offenses against official duty in Criminal Code of the Republic of Srpska and then establish the differences in the object of the act among the individual criminal offenses in this chapter of the law. Finally, we will determine the appropriate recommendations to address the identified dilemmas and enable the adequate application of the prescribed legal norms within these criminal offenses.

2. Object of protection of criminal offenses against official duty

Unlike criminal offenses against state authorities, where criminal legal protection is provided for their proper, efficient, timely, uninterrupted, and lawful functioning in the exercise of state power from all persons who threaten or violate them, "in the case of criminal offenses against official duty, criminal legal protection is provided for the official duty that is threatened or violated by its bearers, namely official or responsible persons" (Bajičić, 2023, p. 282). As the state apparatus tends to strengthen continuously, it leads to an increase in the number of services and persons working in them over time, with some services and authorities exercising public powers not only in the interest of the entire state and society but also in their own interest. This consequently leads to the abuse of entrusted authority for personal gain (see: Kregar, 2004; Jovašević, 2019). As such, criminal offenses against official duty represent various forms and types of abuse of official position and public authority in the performance of official duty committed by official or responsible persons as bearers of these authorities (Radovanović, Đorđević, 1975 cited in Simović, Jovašević & Simović, 2019, p. 112). Most often, these involve the actions of official or responsible persons in the performance of their official duties, not

in the interest and for the needs of the service they perform but for some other interest, intending to gain some benefit for themselves or another natural or legal person, or to cause some harm to others or to severely violate the rights of others (Jovašević, 2005, p. 9; Jovašević, 2011, p. 462). Due to the degree of social danger, the severity of the offense, and the material and other harm they cause not only to individuals and institutions but also to society, these offenses are categorized into a separate chapter. Additionally, these criminal offenses lead to a weakening of citizens' trust in the existing system and the functioning not only of the authorities but also of the entire legal order and the efficiency of the rule of law (Mišić, 2006). Therefore, lawful, quality, efficient, and purposeful actions of official and responsible persons in state authorities and legal entities in performing the entrusted public powers and official duties represent the foundation and guarantee not only for the functioning of public services and state authorities in general but also for the protection of certain human rights and freedoms (Simović et al., 2019, p. 112).

The object of protection is the official duty, which represents a significant social value upon whose lawful functioning the achievement of certain rights and freedoms of individuals, who enjoy criminal legal protection, depends on. This pertains to the duties of official or responsible persons in the state and other bodies (enterprises, institutions, other entities) that exercise public authority. The rights and freedoms protected through the safeguarding of official duties depend on the form of the committed criminal offense, but they most often include rights related to property or property interests, rights to freedom of decision-making, rights to personal dignity, and similar rights (Bajičić, 2023). Even though these rights and freedoms are already protected through criminal offenses from other chapters, their protection here differs due to the specificity of the act of commission, the manner of commission, the characteristics of the perpetrator, and the consequences. This creates certain problems in determining the object of protection of these offenses, and therefore some authors argue that it is not possible to speak of a unified object of criminal legal protection in these cases, but rather only of a multiple object of protection (Srzentić, et al., 1995, p. 850 cited in Jovašević, 2019, p. 41; Babić, et al., 2005, p. 707). Namely, these criminal acts incriminate the unauthorized or unlawful performance of official duties or the unlawful use of official or public authority. "However, the goal of the perpetrators of these acts is not to unlawfully use or perform public or official authority, nor to unlawfully use their official position, but to achieve some other unauthorized illegal goal through their actions" (Jovašević & Ikanović, 2012, pp. 350–352), which is to obtain some benefit (of a property or non-property nature) for

the perpetrator or another physical or legal person, or to cause damage (of a property or non-property nature) to another physical or legal person, or to violate the rights of another person (Jovašević, 2019, p. 41). However, in the case of these offenses, the criminal legal protection is primarily focused on ensuring the correctness, purposefulness, timeliness, efficiency, and legality of the work of state bodies exercising public authority to preserve citizens' trust in the legal order and the rule of law. This is, therefore, a matter of the general interest of society as a whole and every citizen that state and other public interest services function correctly and legally, as only in this way do they fulfill their social function (Babić, et al., 2005). In contrast to these criminal acts, other criminal offenses, even when committed by official or responsible persons, are classified into different groups of criminal acts because their primary object of protection is some other value[3] (Babić, et al., 2005).

Furthermore, the violation of citizens' rights or other individual values that can be endangered by the abuse of the aforementioned services represents further consequences of the violation of this primary value. The protection object defined in this way is not limited solely to the lawful conduct of classical state administration but encompasses all public services such as social, cultural, educational, and healthcare services, as well as banking and financial services, the trade of goods and services, international economic transactions, and generally any services that exercise public powers. Therefore, in relation to criminal offenses against official duty, one can speak of multiple objects of criminal protection. The immediate object pertains to the criminal protection of state administration, public authority, public powers, lawful operation of the state apparatus, and the proper and lawful performance of official duties

[3] For example, the criminal offense of Facilitating the Conclusion of an Unauthorized Marriage (Article 182 of the CC RS) is classified among the group of criminal offenses against marriage and family. Other offenses include Illegal Actions in Business Operations (Article 248 of the CC RS), Abuse of Position by a Responsible Person (Article 249 of the CC RS), Abuse in Public Procurement Procedures (Article 250 of the CC RS), Failure to Pay Withholding Taxes (Article 265 of the CC RS), Improper Allocation of Corporate Funds (Article 267 of the CC RS), and Issuing Securities without Coverage (Article 276 of the CC RS), which are all grouped as criminal offenses against the economy and payment transactions. Additionally, Non-Execution of a Court Decision (Article 341 of the CC RS) falls under the group of criminal offenses against the judiciary; Forgery and Destruction of Official Documents (Article 349 of the CC RS) is categorized as a criminal offense against legal transactions; Non-Execution of Decisions on Environmental Protection Measures (Article 386 of the CC RS) is classified under environmental crimes; Creating Danger by Improper Execution of Construction Works (Article 395 of the CC RS) falls under criminal offenses against public safety; and Negligent Supervision of Public Traffic (Article 405 of the CC RS) is categorized among criminal offenses against public transportation.

and other duties carried out within the framework of public powers. Although the categorization of these offenses into a separate group of criminal offenses against official duty is based on this defined object of protection, these offenses also infringe upon or threaten certain human rights and freedoms, the criminal protection of which is achieved indirectly through the immediate protection of official duty. Indeed, these criminal acts involve the unlawful or illegal performance of official duties or the unlawful use of public or official powers. However, the aim of the perpetrators of these acts is not to unlawfully use or perform public or official powers or to unlawfully utilize official positions, but rather to achieve some other unlawful objective through their actions. This objective specifically relates to certain human rights and freedoms that are endangered or violated through the unlawful use or execution of public or official powers or through the unlawful use of official positions.

In relation to this, the consequences of these criminal acts manifest as concrete and abstract. The concrete consequence is represented by a violation consisting of obtaining unlawful benefits, causing harm to another, or violating the rights of another person. It boils down to achieving benefits (of a property or non-property nature) for oneself or another physical or legal person or causing harm (of a property or non-property nature) to another physical or legal person or violating the rights of another person. The abstract consequence consists of endangerment and manifests in the form of creating a concrete, close, immediate, and real danger, specifically in threatening the proper, quality, timely, efficient, and lawful performance of official duties and public powers. The commission of these criminal acts creates a danger to the service or other public authority. Here, the danger is real, immediate, and close to the protected social good or value – official duty. As a consequence of these criminal acts, there may also be violations of laws, other regulations, or general acts, or the issuance of some illegal act or the undertaking of unlawful procedures. In the case of some offenses, particularly their basic forms, the consequence is not encompassed by the essence of the criminal act. These are formal or action-based criminal offenses that do not contain a consequence and are considered completed upon the performance of the act of perpetration.

3. Object of action of individual criminal offenses

Starting from the position that a group protective object contains objects of protection for individual criminal offenses, it would then mean that the object of protection for a group of criminal offenses simultaneously represents the object of protection for each criminal offense (Petrović & Jovašević, 2005, p. 119), which

we consider indisputable. At the same time, the object of action depends on the form of the individual criminal offense being committed. This can be an official authorization, but also money, securities, movable property, psychological and physical integrity of individuals, etc. Official powers arise from official duties and include all actions entrusted to an official by law for the purpose of performing their official duties. Commission of these criminal offenses depends on the form of manifestation of each specific form of the criminal offense, and accordingly, it is manifested in the exploitation, exceeding, or non-performance of official duties, unlawful appropriation, deception, unauthorized service, demanding or receiving or accepting promises of gifts or other benefits, offering or promising gifts or other benefits, conscious violation of laws or regulations, or neglecting due oversight, unauthorized disclosure of official secrets, inappropriate use of certain resources, unlawful granting of certain benefits, unlawful collection and payment, unlawfully releasing a detainee, extorting testimony from certain individuals, violating human dignity, and unlawfully appropriating things. The mentioned perpetration actions are merely means or methods to achieve some other illegal goal, generally or in a simpler, more successful, or timely manner (Stojanović & Perić, 2000). An important characteristic of the perpetration actions of these criminal offenses is that they are undertaken in the performance of official duties or in connection with the performance of official duties. The perpetrator, in most of these criminal offenses, is an official[4] or responsible person[5], or a foreign

[4] An official is an elected or appointed official in the legislative, executive, and judicial authorities, local self-government units, and in other bodies and public institutions or services that perform certain administrative, professional, and other tasks within the rights and duties of the authority that established them; a judge of the constitutional court, a judge, a prosecutor, an ombudsman; a person who permanently or occasionally performs official duties in the mentioned public bodies or institutions, a notary, an executor, and an arbitrator, an authorized person in a company or in another legal entity entrusted by law or other regulation enacted based on law or a concluded arbitration agreement to perform public authorities, and who performs a specific duty within those authorities, as well as any other person who performs a specific official duty based on the authorization from the law or another regulation enacted based on law, and a person who has been factually entrusted with the performance of certain official duties (Article 123, paragraph 1, item 3 CC RS).

[5] A responsible person in a legal entity is considered to be an individual who, based on law, regulations, or authorization, performs certain management, supervisory, or other tasks related to the activities of the legal entity, as well as an individual to whom the performance of these tasks has been factually entrusted. A responsible person is also considered to be an official when it comes to criminal offenses where a responsible person is designated as the perpetrator, and which are not prescribed in this code under the section on criminal offenses against official duties, that is, as criminal offenses of an official (Article 123, paragraph 1, item 6 CC RS).

official[6], while in some offenses it can be anyone.[7] When the perpetrator of certain criminal offenses is identified as only an official or responsible person, all those individuals can be perpetrators of those offenses unless the characteristics of a specific offense or a specific regulation indicate that the perpetrator can only be one of those individuals. As a perpetrator of some criminal offenses in this group (for example, disclosing official secrets), a person who has ceased to be an official may also appear[8]. These are criminal offenses committed by specific perpetrators, that is, individuals with certain personal characteristics, namely the characteristics of a domestic or foreign official or the characteristics of a responsible person. These individuals carry out their perpetration actions precisely at the time of performing official duties, exercising various authorities, or undertaking official actions in the performance or related to the performance of their duties. The form of guilt is intent, as these are criminal offenses that represent a conscious and voluntary violation of official duties or public authorities. In addition to intent on a subjective level, in most criminal offenses, there must also be an intention to obtain some benefit for oneself or another, to cause some damage to another, or to seriously violate another's rights. The existence of intent, as a subjective element

[6] A foreign official is a member of the legislative, executive, administrative, or judicial body of a foreign state, a public official of an international organization and its bodies, a judge, and other officials of an international court, who work for compensation or without compensation while serving in the Republic of Srpska. A foreign official is considered to be an individual who is a member, official, or employee of the legislative or executive body of a foreign state, an individual who is a judge, juror, member, official, or employee of a court of a foreign state or an international court, a prosecutor, an individual who is a member, official, or employee of an international organization and its bodies, an individual who is an arbitrator in a foreign or international arbitration, as well as any other foreign individual who performs a specific official duty based on authorization from the law or other regulations enacted based on the law, as well as an individual to whom the performance of certain official duties has been factually entrusted for a foreigner in the Republic of Srpska (owners, co-owners, representatives of companies in the Republic of Srpska) (Article 123, paragraph 1, item 5 CC RS).

[7] Namely, in a small number of criminal offenses from this group, such as embezzlement and misappropriation, in addition to the aforementioned individuals, another person to whom the objects of the criminal offense have been entrusted in service or generally in work within a government body or another legal entity can also appear as the perpetrator. Thus, for the existence of the offense, it is essential that it involves a person to whom certain objects (money, securities, or other movable property) have been "entrusted" in service or work (which they actually handle in service or in connection with the performance of official duties or work obligations).

[8] The perpetrator of this offense does not have the status of an official at the time of undertaking the execution action, but had that status earlier when they learned the secret (data or documents that have the status of an official secret). Finally, any person who offers a gift or other benefit (or promises a gift or other benefit) to an official so that they, in the scope of their official duties, perform or refrain from performing some official action can appear as the perpetrator of the crime of bribery.

on the part of the perpetrator at the time of undertaking the perpetration action, in most cases qualifies this intent as direct intent (dolus directus), which is the highest and most pronounced form of guilt in criminal law (Simić & Petrović, 2002). Only in the case of committing the criminal offense of disclosing official secrets does the law allow for the possibility that the perpetrator, when undertaking the perpetration action, can act with negligence in addition to intent.

The object of the criminal offense of Abuse of Official Position or Authority (Article 315 of the Criminal Code of the Republic of Srpska) is the official authority over which the act of perpetration is undertaken in the form of its exploitation, exceeding, or non-performance. Official authorities represent specific actions of officials that arise from their official duties and include all actions entrusted to the official based on the law for the purpose of performing official duties.

The object of the criminal offense of Embezzlement (Article 316 of the CC RS) includes money, securities, or other movable items that have been entrusted to the perpetrator at work. The perpetrator has possession over the object of the act, meaning they exercise factual control over it for the purpose of performing a service or work, or in connection with the service or work[9]. An item that is available to a person in the course of performing their official duties or at work cannot be the subject of this criminal offense.[10]

In the case of the criminal offenses of Receiving a Bribe (Article 319 of the CC RS), Giving a Bribe (Article 320 of the CC RS), and Trading in Influence (Article 321 of the CC RS), according to the predominant view in criminal law theory, the object of the act is the gift or other benefit (Delić, 2012). However, the essence of these crimes lies in unlawful conduct during the performance of official duties. The targeted object is the official duty that the person, who has been entrusted with it by law, violates by demanding or receiving a gift or other benefit, or by accepting a promise of such, for themselves or another person in order to perform an official duty that should not be performed, or to refrain from performing an official duty that should be performed (Bajičić, 2023, p. 295).The perpetrator takes the act of perpetration directly on the official duty, which they are obligated to perform legally and properly, but does so by demanding for themselves or another person a certain

[9] The concept of items entrusted at work should be interpreted more broadly than just those items necessary for the immediate performance of official duties or work. It also includes items that have been entrusted to the individual at work, as well as those that have arisen in connection with the service or work of the perpetrator (Stojanović & Delić, 2020, p. 320).

[10] For example, a night guard who steals an item from the warehouse they are guarding commits the crime of embezzlement, not theft.

benefit or a promise of benefit in the form of a gift or some other advantage. In other words, the act of demanding or receiving a gift or other benefit, or the acceptance of such a promise in the context of this criminal offense, more closely represents a type of preparatory act that creates the conditions or assumptions for undertaking a specific act that manifests in performing an official duty that should not be executed or failing to perform an official duty that should be carried out. Demanding or receiving constitutes preparatory acts, while the gift or other benefit can be understood as a means of perpetration or the manner of committing those acts that create the conditions for undertaking the specific act of perpetration in the form of violating official duties (in this form of receiving a bribe, the perpetrator violates their official duties). Despite the fact that for the existence of the offense, it is not necessary for the official authority to be violated, as it is an act-based or formal criminal offense, which is considered completed by undertaking the act of perpetration, in this case by undertaking preparatory acts as previously stated, it does not change the fact that the object of the act is the official authority. By demanding or receiving a gift or other benefit, or accepting such a promise, the perpetrator creates the necessary assumptions, thereby jeopardizing the object of the act. If we also consider the fact that the object of the act is also referred to as the "attacked object" (what is being attacked by the act of perpetration), it certainly cannot be the gift or other benefit but rather the official authority or the official act. Considering all the above in light of the criminal offense of abuse of official position, where the act of perpetration is manifested in the exploitation, violation, or non-performance of official duty, where it clearly represents the object of the act, it can be said that the previous understanding of the object of the act is indeed correct. This interpretation can also be applied to the other two observed criminal offenses, with the exception that the perpetrator of the crime of Giving a Bribe can be any person.

The object of the criminal offense of Violation of Human Dignity by Abuse of Official Position or Authority (Article 329 of the CC RS) would be the psychological or physical integrity of the person who is grossly abused, intimidated, physically harmed, or otherwise treated by an official in the performance of their duties in a manner that offends human dignity. The systematization of this criminal offense in this part of the code raises numerous questions, primarily from the perspective of the object of protection as we have previously defined it.

4. Conclusion

The question of determining the object of a criminal offense, through the definition of the object of protection and the object of action, represents one of the important issues in criminal law. This is particularly evident in criminal offenses that can have multiple objects of protection, as well as different objects of action for individual criminal offenses. A typical example is criminal offenses against official duty, where criminal law protection is primarily provided for the lawful and responsible performance of official duties by officials or responsible persons, which is a prerequisite for the realization of other rights of citizens. Thus, the performance of official duties contrary to the aforementioned (object of protection) "attacks" various values and goods (object of action), thereby endangering individual rights and guaranteed freedoms. However, grouping criminal offenses whose object of protection is the performance of official duties into the same category of criminal offenses is not entirely fulfilled. This is because individual criminal offenses have multiple objects of protection, so the legislator decided to systematize them into different chapters of the special part of the CC RS (as mentioned in the text). At the same time, other criminal offenses that are not typical for this chapter, as they endanger the psychological or physical integrity of individuals, are systematized in the group of criminal offenses against official duty, based on the status of the perpetrators of these criminal offenses. This description can be contentious when distinguishing individual criminal offenses, not only within the same group of criminal offenses but also from other criminal offenses. The use of vague norms creates confusion both at the level of distinguishing the permissible from the prohibited and in the realm of overlapping multiple related criminal offenses, and one must keep in mind the old rule *ibi ius incertum, ibi ius nullum* (where the law is uncertain, there is no law) (Kolaković Bojović, 2014, p. 241). This can directly impact the application of the norm in judicial practice, as the burden of proof for all essential elements of the criminal offense remains in the criminal proceedings.

These dilemmas are particularly pronounced when assessing and protecting legality, because if a norm is not prescribed, clear, precise, and defined—that is, in accordance with the principles of lex scripta, lex certa, lex previa, and lex stricta—its application is hindered, which endangers the protective function of criminal law. At the same time, the question arises whether individual criminal offenses against official duty, given the object of action, have already been described by other types of criminal offenses and how a clear distinction can be made between them. As a reminder, "apparent

ideal concurrence exists when a single action fulfills the elements of two or more criminal offenses that are in such a relationship that only one criminal offense is applied. The relationship between the committed criminal offenses is primarily characterized by the fact that the unlawfulness of one criminal offense appropriately (specialty, subsidiarity, and consumption) encompasses or excludes the unlawfulness of the other(s)" (Delić, 2018, p. 143).

Therefore, it is necessary to conduct a detailed legal analysis of the criminal offenses categorized in the group of offenses against official duty, with the aim of determining whether, in terms of the object of protection and the object of action, they belong to this group of offenses. This raises complex questions regarding the complete or partial decriminalization of certain offenses from this chapter (e.g., Abuse of Official Position), while simultaneously affirming other offenses (e.g., Influence Peddling) or even incriminating new behaviors that would naturally belong to this chapter (e.g., Illicit Enrichment) (see: Kolarić, 2012; Delić, 2018).

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KRIVIČNA DELA PROTIV SLUŽBENE DUŽNOSTI S OSVRTOM NA OBJEKAT KRIVIČNOG DELA

APSTRAKT: Iz samog naziva grupe krivičnih dela protiv službene dužnosti proizilazi i njihov objekat zaštite, a to je savesno i odgovorno vršenje službene dužnosti. Međutim, ovim krivičnim delima ugrožavaju se različite zaštićene vrednosti, kao što su slobode i prava građana, njihov fizički i psihički integritet, zatim njihova imovina, i drugo. U tom kontekstu do izražaja dolazi razlikovanje objekta radnje u odnosu na definisani objekat zaštite ove grupe krivični dela. To znači da je potrebno razlikovati neposredni predmet koji se pojedinačnim krivičnim delima iz ove grupe

napada, tzv. predmet napada, u odnosu na postavljeni objekat zaštite, kao opštu vrednost koja se štiti. Predmet rada je analiza pravnih normi pojedinačnih krivičnih dela sa osvrtom na diferenciranje objekta zaštite i objekta radnje. U tom smislu uporedićemo bića pojedinih krivičnih dela protiv službene dužnosti, prvenstveno onih kod kojih su objekti radnje različiti, a objekat zaštite po njihovoj sistematizaciji ostaje isti. Cilj rada je da se utvrdi da li su postojeća krivična dela protiv služene dužnosti, s osvrtom na objekt krivičnog djela, ispravno sistematizovana u grupu krivičnih dela protiv službene dužnosti i koji su mogući pravci otklanjanja uočenih nedostataka.

Ključne riječi: *krivično delo, službena dužnost, objekat zaštite, objekat radnje, primanje mita.*

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GENERAL DAMAGES AWARDED FOR EMOTIONAL DISTRESS RESULTING FROM MISCARRIAGE OF JUSTICE AND FALSE IMPRISONMENT

ABSTRACT: Compensation for non-economic damages, the debate over its justification, and the adequacy of compensation awarded for harm to non-economic goods have been contentious issues among domestic legal theorists for decades. The provisions of the 1978 Law on Obligations resolved this debate by introducing the right to monetary compensation for non-economic damages in explicitly enumerated cases. The aim of the authors is to use appropriate scientific methods to demonstrate how failures by state authorities, specifically the police and judicial bodies, can cause non-economic damage to individuals through miscarriages of justice and false imprisonment. Freedom is a fundamental human right, guaranteed by the Constitution, laws, and ratified international documents. This raises the question of how, and to what extent, a wrongful conviction or unlawful deprivation of liberty violates this fundamental right, and what legal remedies are available to the victim. The focus of the paper will be on the legislation of the Republic of Serbia, as well as the views and interpretations in legal theory and in practice regarding the victim's

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claim for monetary compensation for harm to non-economic goods, such as reputation and honor.

***Keywords**: non-economic damages, freedom, wrongful conviction, deprivation of liberty, detention.*

1. Introduction

The Law on obligations (hereinafter referred to as the LOO) represents the most significant source of compensation law in the Republic of Serbia. Although it does not contain an explicit definition of damages, the LOO classifies damages into ordinary damages, lost profit, and forms of general damages. (Article 155 of LOO: "Damage consists of a reduction in someones property (ordinary damage) and the prevention of its increase (loss of profit), as well as causing physical or psychological pain or fear to another (non-material damage)". In contrast to this normative understanding of damage, legal theory presents varying conceptual definitions of damage. For example, Radovanov defines damage as: "Injury to someones subjective right or legally protected interest caused by a harmful act" (Radovanov, 2009, p. 257). Radišić defines damage as "A loss suffered by the injured party, arising against their will, due to the actions of a third party or a natural event" (Radišić, 2004, p. 197). Salma views damage as "a reduction or diminution of someones property or harm to the psychological or physical integrity of a person. This definition of damages is not uniform, as it simultaneously encompasses both moral and material damage" (Salma, 1999, p. 441).

The grounds for claiming general damages under the provisions of the LOO may include physical pain, fear, death, or severe disability of a close relative, infringement of personal freedom or rights, mental suffering due to various reasons such as: reduction in general life activity, disfigurement, harm to honor and reputation, in cases of criminal offenses such as rape, indecent acts, or other crimes against personal dignity and morality, as well as miscarriage of justice and false imprisonment.

The last mentioned reason, mental suffering caused by miscarriage of justice and false imprisonment, constitutes a specific legal basis for claiming monetary compensation in cases of general damages. This raises the question: why do these circumstances provide grounds for claiming compensation? While a conviction in a judicial process and false imprisonment are certainly not legitimate reasons to seek damages, when an appeal or a renewed criminal proceeding establishes that the conviction and imprisonment were groundless, the injured party has a legal right to seek compensation for the damages suffered.

What does the damage in the specific case reflect? To answer this question, it is necessary to consider the broader context and look at the injured party within a larger framework, as an individual who belongs to a collective, a society that surrounds them, and in which the individual occupies a certain place, reflected through their social position and status. Every individuals actions influence their reputation, which can be either positive or negative. However, reputation is not constant and is subject to change due to internal and external factors. Changes in behavior and individual actions can significantly undermine and damage a persons honor and dignity. External factors can also impact someone's social status in both negative and positive contexts. Miscarriage of justice and false imprisonment certainly fall into factors that exclusively alter the injured party's status in society in a negative context and offend their dignity as one of the greatest human goods. "Individuals who are falsely imprisoned or wrongfully convicted in criminal proceedings are, in a way, victims of erroneous, improper, or illegal actions by the police and/or judicial authorities. The fundamental demand for justice necessitates that these individuals be compensated for the damages suffered, and subsequently, that their full social rehabilitation be achieved" (Mrvić Petrović & Petrović, 2010, p. 7).

2. General damages – concept, legal nature and purpose

Many questions have been raised in the past regarding the compensation for general damages: whether compensation is justified and fair, whether it is compensation in the true sense of the word, and whether it is even possible to express non-economic damage in monetary terms, or if it all results from the courts individual assessment in each specific case. In legal theory, there are viewpoints that argue that general damages are not justifiable "because it does not restore the state to what it was before the damage occurred. It is, by nature, a form of satisfaction provided to the injured party for the violation of their non-economic goods. It is based on the principle that the injured party cannot receive more through compensation than the extent of the actual damage suffered" (Blagojević & Krulj, 1980, p. 737).

Our Law on obligations has not left room for improvisation and free interpretation by legal theorists and the judiciary regarding what general damages should be, but has specified it in Article 155 of the LOO, defining all forms of damage that can occur: "Injury or loss shall be a diminution of someone's property (simple loss) and preventing its increase (profit lost), as well as inflicting on another physical or psychological pain or causing fear (general damages)." We believe this is the correct stance and that it is beneficial that the nature of damage

is not automatically determined based on the type of the attacked good, as general damages can be caused not only by violations of personal rights (such as life, freedom, body, honor, reputation, and other non-economic goods guaranteed by the legal order to every citizen) but also by the destruction of property or harm to affections towards a close person. Property damage can arise from violations of these same goods, so the damage suffered is always either property or general.

Violation of personal integrity and personal rights leads to a disturbance in the psychological balance and a disruption in the physical integrity of the individual, that is, the injured party. The condition of the individual prior to the occurrence of the damage was ordinary. Therefore, compensation for general damages should not be viewed merely as a sum of damages incurred, and compensation should not be perceived as repair, but rather as satisfaction to be received by the injured party. The purpose of monetary compensation is not for lucrative goals, as someone seeking material gain would be incompatible with the purpose of this compensation, since moral values should not be commercialized. "Satisfaction as a form of compensation represents a general term for marking various types of damages in the field of non-economic damages (such as the publication of a judgment, withdrawal of statements, monetary compensation, etc.). Since the consequences of the wrongdoers actions cannot be eliminated in cases of general damages, satisfaction simultaneously represents the goal of compensating general damages – providing satisfaction to the injured party. While restoration to the previous state is the primary form of compensation for material damage, the primary compensatory result in the realm of general damages is the provision of satisfaction. The manner of providing satisfaction is determined based on the type of general damages. In principle, satisfaction can be determined in kind and in money" (Džudović & Prelević, 2009, p. 48).

Article 200, paragraph 2 of the LOO establishes the criteria that the court must adhere to when deciding on a claim for general damages compensation: "In deciding on the request for redressing non-material loss, as well as on the amount of such damages, the court shall take into account the significance of the value violated, and the purpose to be achieved by such redress, but also that it does not favour ends otherwise incompatible with its nature and social purpose" (Article 200, paragraph 2 of LOO). The court must take into account the significance of the injured interest, as this may vary from case to case. For instance, an amputated leg will be of much greater significance in terms of loss for a professional athlete who can no longer engage in sports, or an injured hand for a musician who can no longer play an instrument, compared to similar injuries to others. Similarly, the pain caused by an injury to ones honor is less than the pain caused by severe disfigurement of one's face.

When making a decision, the court must pay attention to certain factors. Primarily, it should consider the importance of the injured interest and the goal it aims to achieve in deciding on the claim for general damages. In determining the amount of compensation, the court should take into account the social purpose it seeks to achieve through its judgment. Bećirović and Ljajić assert that: "In the case of general damages as defined by law, monetary compensation is awarded to the injured party only if the intensity and duration of the pain or fear are justified, which will affect the reestablishment of psychological balance or at least provide some relief to the injured party's psychological state. This has been shown in practice to be a partially effective method of achieving the goal of damage compensation, which is to restore the prior state. By initiating proceedings before the competent court, the injured party can claim compensation for general damages through a lawsuit. A claim for general damages is characterized by the element of specificity regarding the type of general damages; even when it arises from the same life event, each form of damage must be specified individually. In modern legal systems, compensation for general damage is a part of our present-day reality" (Bećirović Alić & Ahmatović Ljajić, 2018, pp. 141–142).

Numerous circumstances must be considered by the court when evaluating the validity and determining the amount of compensation for general damages. This primarily refers to the intensity of emotional pain, fear, and physical pain experienced by the injured party, as well as the duration of these effects. Only after establishing that their intensity and duration are sufficient to justify the claim will the court proceed to determine the amount of monetary compensation. The provisions of the LOO regarding compensation for general damages aim to align with the nature of the damage and the specific type of compensation, which is why it is not incorrect to say that compensation has more of a satisfaction function rather than a compensation and restitution function, as confirmed by judicial practice.[1] Article 200, paragraph 1 of the LOO stipulates that the court will award fair monetary compensation when physical pain, emotional pain, and fear are justified; however, the law introduces an additional condition, requiring that it must also

[1] "Fair compensation for non-material damage, as a form of remedying adverse effects, involves the payment of a sum of money as satisfaction for the suffered non-material damage, with the aim of restoring the injured party's psychological and emotional balance to the extent possible, given that restitution is inherently impossible" Presuda Vrhovnog kasacionog suda Republike Srbije br. Rev 508/2017 od 12.04.2017. godine [Judgment of the Supreme Court of Cassation No. Rev 508/2017 of April 12, 2017.] Downloaded 2024, August 27 from: https://www.vrh.sud.rs/sr/vks-search-download-file/24520

fulfil the following; "if it finds that the circumstances of the case, particularly the intensity of pain and fear and their duration, justify it."[2] This means there is no right to compensation for minor damage, and if the court finds that the pain for which compensation is sought was of short duration and minimal intensity, it will reasonably reject the claim for general damages. Thus, both a long duration and significant intensity of emotional pain are required.

The LOO provides for the possibility of compensation for general damages due to psychological (emotional) and physical (bodily) pain. Psychological pain manifests as harm to the feelings, reputation, and honor of the injured party. In some cases, compensation for harm to reputation and honor may follow the principle of restitution to the prior state (*restitutio in integrum*). However, in cases of harm to feelings, that is, emotional pain, only monetary compensation as material satisfaction can be applied to the injured party. Determining compensation for harm to feelings and the resulting psychological pain is a delicate and complex process, as there are no general standards due to the varying moral and psychological constitution of each individual, as well as the wide range of circumstances that lead to damage causing psychological pain to the injured party. According to Blagojević and Krulj, "Compensation for physical pain, compared to compensation for harm to feelings and moral integrity of the injured party, which can be considered independent of the act of causing damage itself, appears as an additional compensation in cases of bodily harm. It represents a type of accessory compensation in addition to the primary compensation that covers medical treatment, rehabilitation costs, and lost earnings" (Blagojević & Krulj, 1980, p. 740).

3. Miscarriage of justice and false imprisonment – Legal Basis for awarding general damages caused by emotional pain

3.1. Constitutional provisions

Fundamental human and minority rights and freedoms are guaranteed by Articles 18–81 of the Constitution of the Republic of Serbia. Due to the sensitivity of the issue of freedom and its limitation, deprivation, or complete abolition, the Constitution contains specific provisions addressing matters

[2] This opinion is based on the provision of the Law of Obligations which states that; "the court, if it finds that the circumstances of the case, particularly the intensity and duration of pain and fear, justify it, shall award fair monetary compensation, regardless of the compensation for material damage or in its absence"

such as the right to liberty and security, the treatment of persons deprived of liberty (especially when deprived of liberty without a court decision), and the matter of detention and its duration. “Criminal proceedings carry with them not only the risk of unjustified initiation against an innocent person, but also the risk of ending with an unjustified conviction” (Brkić, 2009, p. 411). Violations of fundamental human rights have consequences affecting both the violator and the injured party, the victim. “Person falsely imprisoned or wrongfully convicted in criminal proceedings are considered victims of wrongful, irregular, or illegal actions by the police and/or judicial authorities. The fundamental demand for justice imposes the need to compensate these individuals for the damage suffered and subsequently achieve their full social rehabilitation” (Mrvić Petrović & Petrović, 2010, p. 2). In cases of false imprisonment and miscarriage of justice, the question of state responsibility, the responsibility of its authorities, arises. The position of state authorities in the legal relationship with citizens is not one of equality, as they operate from a superior position as holders of public authority and those who control the apparatus of coercion.“It is certain that there is a strong tendency today to recognize the states obligation to pay compensation, and this obligation in modern states increasingly relies on the concept of risk – that the state should guarantee with its assets for the proper and lawful performance of public services and the principle of equal burdens in situations where officials and state authorities have violated an individuals rights through permitted actions” (Marković, 2014, p. 41). Stanić emphasizes that: “The right to liberty and personal security is one of the most important human rights, which is thus guaranteed on both the national and international level. When it comes to detention, formally, and in accordance with the presumption of innocence, detention is always applied to a person who is formally innocent. Therefore, it is necessary to provide certain guidelines on how detention should be applied only when necessary, to prevent the state from later being obligated to compensate for the damage incurred” (Stanić, 2019, p. 269). Article 30, paragraph 1 of the Constitution provides the following regarding detention: “A person who is reasonably suspected of committing a criminal offense may be detained only based on a court decision if detention is necessary for conducting criminal proceedings.” To resolve any doubts regarding miscarriage of justice and false imprisonment, Article 35 of the Constitution stipulates: “Anyone who has been unlawfully or illegally deprived of liberty, detained, or convicted of a criminal offense has the right to rehabilitation, compensation from the Republic of Serbia, and other rights established by law. Everyone has the right for compensation for material or general damages

caused by unlawful or irregular actions of a state authority, holder of public authority, autonomous province authority, or local self-government authority. The law determines the conditions under which the injured party has the right to seek compensation directly from the person who caused the damage."

3.2. Legal Regulation of damages compensation for wrongful conviction and false imprisonment

The LOO contains a provision in Article 172 that regulates the liability of a legal entity for damage caused by its authorities. However, we believe that this provision is inapplicable in cases of false imprisonment and miscarriage of justice, as the application of the LOO requires that the actions of the state authority be unlawful (i.e., in direct violation of legal provisions) and improper (i.e., legal provisions not applied as intended by the legislator), which is not the case here. Specifically, state authorities, including the police and judiciary, act in a lawful and proper manner, but the injured party is falsely imprisoned and wrongfully convicted due to errors and misunderstandings by the state authorities. "However, these "errors" are often not the result of unlawful conduct. A person who suffers damage due to false imprisonment or miscarriage of justice,, where such damage did not result from improper and unlawful conduct by the court, would not be able to claim compensation under general rules of civil liability for damages, as there is typically no improper and unlawful conduct involved. Therefore, it is in the interest of the injured party to seek compensation based on liability for damages regardless of the existence or non-existence of fault" (Marković, 2014, p. 41).

In legal theory, we encounter opinions that offer alternatives to detention, thereby reducing the likelihood of improper conduct by state authorities and consequently the potential for claims for damages: "The institution of bail exists in other branches of law, such as civil or administrative law, and is also present in enforcement proceedings. In relation to bail in other branches, where it represents a guarantee for the fulfillment of financial obligations of a specific individual, in criminal proceedings, bail is determined to ensure the accused's presence and the unobstructed conduct of the proceedings. The advantages of bail over detention, as well as other measures that restrict the accused's freedom of movement, are numerous. Specifically, bail ensures the presence of the accused and the smooth conduct of the proceedings while avoiding the detrimental effects of restricting the accused's personal freedom. At the same time, the budgetary costs associated with the accused's detention are eliminated, and at the end of the proceedings, potential compensation

for wrongful deprivation of liberty is avoided. Furthermore, bail, like other alternatives to detention, reduces the overcrowding of institutions where detention is served, which already represents a chronic problem under domestic conditions" (Banović, 2019, pp. 202–203).

The Criminal Procedure Code (hereinafter referred to as the CPC) is, alongside the Civil Code, another law that regulates the right to damages in the case of wrongful deprivation of liberty: "An individual who has been wrongfully deprived of liberty or convicted of a criminal offense has the right to compensation from the state and other rights defined by law." (Article 18, paragraph 1 CPC.) The CPC specifically enumerates who is considered to be wrongfully deprived of liberty: "An individual is considered to be wrongfully deprived of liberty if:

1. They were deprived of liberty, and no proceedings were initiated, or the proceedings were terminated by a final decision, or the indictment was dismissed, or the proceedings were concluded by a final judgment of acquittal or dismissal;
2. They served a prison sentence, and upon a request for retrial or a request for protection of legality, they were sentenced to a prison term shorter than the sentence served, or a criminal sanction that does not involve deprivation of liberty was imposed, or they were found guilty but exempted from punishment;
3. They were deprived of liberty for a period longer than the criminal sanction involving deprivation of liberty that was imposed on them;
4. They were deprived of liberty due to an error or illegal actions by procedural authorities, or their deprivation of liberty lasted longer than legally prescribed, or they were held longer in a facility for the execution of a criminal sanction involving deprivation of liberty" (Article 584, paragraph 1 CPC.)

3.3. International Legal Frameworks

The right and guarantee of freedom are also enshrined in numerous international legal documents ratified by Serbia. For instance, the Universal Declaration of Human Rights[3] guarantees in Article 3 that "Everyone has the right to life, liberty, and security of person," and in Article 9 that "No one shall

[3] Opšta deklaracija o pravima čoveka [Universal Declaration of Human Rights] – adopted by the United Nations General Assembly on December 10, 1948. Downloaded 2024, August 21 from: https://ravnopravnost.gov.rs/wp-content/uploads/2012/11/images_files_UN_Opsta%20deklaracija%20o%20pravima%20coveka.pdf

be subjected to arbitrary arrest, detention, or exile." The International Covenant on Civil and Political Rights provides additional guarantees for the rights of individuals deprived of liberty. According to this international document, deprivation of liberty may only be applied in accordance with the law (Article 9), and it is explicitly prohibited to deprive someone of their liberty for failure to fulfill contractual obligations (Article 11). These documents together form the foundation for the protection of fundamental human rights worldwide. The European Convention on Human Rights provides that "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty except in accordance with a procedure prescribed by law" (Knežević, 2011, p. 169).

3.4. Procedure for claiming damages

In the event that an individual is victim of a miscarriage of justice or falsely imprisoned, under the provisions of the LOO, there is the possibility to claim monetary compensation for general damages caused by such circumstances. Emotional distress resulting from miscarriage of justice or false imprisonment includes all harmful effects related to the personality of the injured party that arise or are directly caused by the miscarriage of justice or false imprisonment. When determining the amount of monetary compensation, the court takes into account all the circumstances of the particular case. Radovanov specifies cases in which there is no right to compensation, in accordance with Article 585 of the CPC: "The right to liberty is not considered to have been violated:

1. if the termination of proceedings or the judgment dismissing the indictment occurred because, in a new procedure, the injured party, as the prosecutor or private prosecutor, withdrew from prosecution or if the injured party withdrew the motion based on an agreement with the accused;
2. if in the new procedure the indictment was dismissed due to the court's lack of jurisdiction, and the authorized prosecutor undertook prosecution before the competent court;
3. the convicted person has no right to compensation if they intentionally caused their own conviction through false confession or otherwise, unless they were coerced into doing so" (Radovanov, 2009, p. 298).

The proceeding for claiming general damages due to miscarriage of justice or false imprisonment involves the injured party in a process that

has a "dual nature: (1) an administrative procedure before an administrative body, which is primary, and (2) a judicial procedure before a civil court, which is secondary and supplementary" (Simović & Jovašević, 2017. p. 91). According to Article 588, paragraph 1 of the CPC, before filing a lawsuit for damages in court, the injured party must submit a "request to the Ministry responsible for justice to reach an agreement on the existence of damage and the type and amount of compensation. The request for compensation is reviewed by the Compensation Commission, whose composition and procedures are regulated by an act of the Minister responsible for justice. If the request for compensation is not approved or if the Commission does not decide on the request within three months from the date it was submitted, the injured party may file a lawsuit for compensation with the competent court. If an agreement is reached only regarding part of the claim, the lawsuit for compensation may be filed for the remaining part of the claim." The request can be downloaded electronically from the Ministry of Justice's website. "The Compensation Commission for determining damage and the type and amount of compensation for individuals who are victims of miscarriage of justice and false imprisonment reviews the request and accompanying documentation and makes appropriate decisions. After making a decision to approve the request, the Ministry of Justice provides the applicant with a Proposal for an agreement on the type and amount of compensation, enclosed with a supporting act (which specifies the documentation required to be submitted to the Ministry, if there is agreement on the proposal) and sets a deadline for the applicant to indicate whether they accept the proposed agreement."[4] "This approach leaves the injured party the option to refuse to sign the agreement if they believe that the monetary amount proposed by the state does not adequately reflect the damage suffered. In such a case, the injured party has the right to address the competent court, present the agreement along with the reasoning for its rejection when filing the lawsuit, and seek approval of the claim, including other facts and evidence supporting their claim for damages. Additionally, if a partial agreement is reached with the Commission, the injured party retains the right to obtain partial compensation through the agreement while submitting a lawsuit to the competent court for the remaining amount" (Milovanović, 2021, pp. 259–276).

[4] Zahtev za naknadu neosnovano osuđenih i neosnovano lišenih slobode. [Request for Compensation for Wrongful Conviction and Unlawful Deprivation of Liberty]. Downloaded 2024, August 21 from https://www.mpravde.gov.rs/tekst/15039/zahtev-za-naknadu-stete- neosnovano-osudjenih-i-neosnovano-lisenih-slobode.php

Based on statistical data from an objective research by the Belgrade Center for Human Rights, which used the legal right to request access to information of public importance, the results are discouraging. Specifically, for the past eight years (2016–2023), there is a noticeable trend of decreasing numbers of individuals subjected to detention, which is a positive trend. However, during the same period, the number of detainees has nearly doubled (Table 2) and shows a trend of increasing growth. Given the drastic rise in cases of domestic violence in the Republic of Serbia over the last decade, accompanied by femicide, which has not decreased,[5] it is a logical conclusion that detention is used as a measure to prevent domestic violence and femicide, as evidenced by the significant increase in the imposition of measures restricting proximity, meetings, and communication in Table 1. Nevertheless, despite the increased number of imposed measures, the rise in their application indicates that they are not yielding the expected results, and more effort is needed in education and prevention.

The Compensation Commission for individuals falsely imprisoned or wrongfully convicted[6] provided data on the number of claims submitted for compensation caused by false imprisonment, the number of claims reviewed by the Commission, the number of agreements reached, and the amounts paid under the concluded agreements.

Analysis of the data presented in table 3, relating to compensation for false imprisonment, based on the parameters provided in Table 3 – namely, the number of claims submitted for compensation caused by false imprisonment, the number of claims reviewed by the Commission, the number of agreements reached, and the amounts paid under the concluded agreements (in RSD) – the following conclusions can be drawn:

- The number of claims submitted for compensation due to **false imprisonment** decreased by 227 from 2015 to 2023, representing a 31.7% reduction in the number of claims.
- The number of claims reviewed by the Commission doubled (from 223 to 448).

[5] "According to official data, there were 20 cases of femicide recorded in 2021, 26 cases in 2022, and asmany as 28 cases in 2023. In Serbia, 28 women were killed in 2023: Stanojević urges to report violence" Downloaded 2024, August 27 from: https://www.nin.rs/drustvo/vesti/43317/u-srbiji-u-2023-ubijeno-28-zena-stanojevic-poziva-da-se-nasilje-prijavi

[6] Pravilnik o sastavu i načinu rada komisije za naknadu štete licima neosnovano lišenim slobode ili neosnovano osuđenim [Rulebook on the composition and method of work of the commission for compensation of damages to persons unjustly deprived of liberty or unjustly convicted]. *Službeni glasnik RS*, br. 156/20.

Table 1. Overview of the number of individuals subject to detention and other measures for ensuring the defendant's presence and the unimpeded conduct of criminal proceedings.

Measures	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	Year 2021	Year 2022	Year 2023
Detention	5.634	6.754	6.107	5.840	5.123	4.645	3.523	4.788
Bail	31	33	23	45	18	18	19	19
House arrest	428 (of which 215 are under electronic monitoring)	760 (of which 544 are under electronic monotoring)	677 (of which 466 are under electronic monotoring)	392 (of which 311 are under electronic monotoring)	475 (of which 180 are under electronic monotoring)	425 (of which 263 are under electronic monotoring)	223 (of which 145 are under electronic monotoring)	439 (of which 248 are under electronic monotoring)
Restriction on leaving residence	612	512	452	396	413	385	285	371
Restraining order	372	1.029	1.797	1.744	1.391	1.139	875	1.66

Source: Human Rights in Serbia 2023 (2024)., pp. 80–81.

Table 2. Overview of the number of detainees.

Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2022	Year 2023
1.539	1.736	1.577	1.693	1.833	2.193	2.518

Source: Human Rights in Serbia 2023 (2024)., pp. 80–81.

Table 3. Compensation for false imprisonment.

YEAR	Number of claims Submitted for compensation due to false imprisonment	Number of claims reviewed by the Commission	Number of Agreements Reached	Amounts Paid Under the Concluded Agreements (in RSD)
First half of year 2015	450	172	20	1.939.500
2016.	940	243	61	15.485.000
2017.	815	235	38	10.747.500
2018.	787	257	69	14.418.000
2019.	767	208	51	8.939.948
2020.	739	133	43	7.791.500
2021.	759	517	189	84.376.000,00
2022.	750	447	219	76.832.267,12
2023	713	448	145	55.188.000,00
TOTAL	6.720	2.660	1.495	275.717.715,12 (about 2.356.561,67EUR)

Source: Human Rights in Serbia 2023 (2024)., pp. 80–81.

- The number of agreements reached also increased significantly (from 61 to 145).
- The amounts paid under the concluded agreements increased substantially, from 15.4 million RSD to amounts that are significantly higher compared to 2016, with payments of 84.3 million RSD in 2021, 76.8 million RSD in 2022, and 55.1 million RSD in 2023.

For the period from 2015 to 2023, a total of 275,717,715.12 RSD was paid, which is approximately equivalent to 2,356,561.67 EUR. According to the report by the Belgrade Center for Human Rights, data from courts handling civil claims for compensation due to wrongful detention are also noted: "Regarding the compensation paid for damages caused by wrongful detention adjudicated by civil courts, according to data obtained from the State Attorney's Office, 128,461,952.33 RSD, or approximately 1,097,965.4 EUR, was paid in 2023, which is nearly double the amount paid in 2020." (Human Rights in Serbia 2023, 2024, p. 81.)

4. Conclusion

Compensation for general damages, since the enactment of the Law on Obligations in 1978, is no longer a contentious issue in legal theory and practice regarding the validity of claims for such compensation. Judicial practice has demonstrated that each case of general damages is unique and cannot be addressed with a general approach; instead, each case must be carefully evaluated to ensure that compensation is fair. As previously discussed, the purpose of compensation for general damages is not reparative but rather to provide satisfaction to the aggrieved party.

The task of the court is challenging, as determining the amount of monetary compensation for general damages is complicated by the need to avoid two "traps" when rendering a judgment. On one hand, the court must strive not to generalize and ensure that the monetary compensation provides the aggrieved party with satisfaction that will, to the extent possible, restore the psychological balance disrupted by the inflicted mental anguish, physical pain, and fear. On the other hand, the court must adhere to the constitutional principle guaranteeing equality of all citizens before the law and the court. Therefore, the court cannot act arbitrarily or according to its own discretion. It is the court's obligation, particularly in cases of miscarriage of justice and false imprisonment, to ensure the satisfaction of the aggrieved party, given that the court has determined that the individual was deprived of a fundamental human right – the right to liberty.

The research conducted in this paper shows that the amounts paid under concluded agreements in the last three years are ten times higher compared to the multi-year average, even though the number of claims for compensation due to false imprisonment shows a decreasing trend. There is also a rising trend in the number of detainees over the past eight years, which somewhat corresponds to the "epidemic" of domestic violence and the number of femicides in recent years in Serbia. It is evident that the use of detention as a preventive measure in cases of domestic violence has intensified in practice.

To reduce the number of claims for compensation for general damages due to miscarriage of justice and false imprisonment, the authors suggest increased adherence to legal procedures when determining detention and deprivation of liberty. It is imperative, and a democratic achievement, to reduce political influence on the judiciary to prevent the misuse of detention for dealing with political dissenters, who may file claims for general damages upon release. It is also suggested that mandatory training be provided to all those involved in the process of restricting citizens' freedoms: from investigative bodies to prosecutors and courts.

Ultimately, adherence to international standards and best international practices can only benefit everyone and contribute to reducing the number of claims for compensation for general damages due to miscarriage of justice and false imprisonment.

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NAKNADA NEMATERIJALNE ŠTETE ZBOG DUŠEVNIH BOLOVA NASTALIH NEOSNOVANOM OSUDOM I NEOSNOVANIM LIŠENJEM SLOBODE

APSTRAKT: Naknada nematerijalne štete, dilema njene opravdanosti i adekvatnost obeštećenja koje je neko lice primilo na osnovu pretrpljene štete na nematerijalnom dobru, predstavljaju pitanja oko kojih su se

decenijama „lomila koplja“ među domaćim pravnim teoretičarima. Tačku na ovu nedoumicu stavile su odredbe Zakona o obligacionim odnosima iz 1978. godine koje su uvele pravo na novčanu naknadu nematerijalne štete u taksativno navedenim slučajevima. Cilj autora je da u radu, primenom odgovarajućih naučnih metoda, ukažu na koji način propusti u radu državnih organa, konkretno, policije i organa pravosuđa, mogu da pričine nematerijalnu štetu žrtvi, neosnovanom osudom i lišenjem slobode. Pravo na slobodu je elementarno ljudsko pravo zagarantovano Ustavom, zakonima i ratifikovanim međunarodnim aktima. Postavlja se pitanje na koji način i u kojoj meri donošenje neosnovane osude tj. neosnovano lišenje slobode krši to elementarno ljudsko pravo i koji pravni instrumenti stoje na raspolaganju žrtvi. Predmet rada će biti pozitivnopravni propisi u Republici Srbiji, kao i stavovi i shvatanja u pravnoj teoriji i praksi u vezi sa zahtevom žrtve da joj se novčano nadoknadi šteta koju je pretrpela na nematerijalnim dobrima kao što su ugled i čast.

***Ključne reči**: nematerijalna šteta, sloboda, neosnovana osuda, lišenje slobode, pritvor.*

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PRIVACY UNDER THREAT – THE INTERSECTION OF IOT AND MASS SURVEILLANCE

ABSTRACT: The rapid development of information and communication technologies, blockchain technologies, artificial intelligence (AI), as well as the Internet of Things (IoT) devices has brought numerous advantages to modern society. Alongside increased comfort of life and efficiency in all areas of human activity, the automation enabled by interconnected networks also poses a challenge to citizens' right to privacy. The goal of this research is to identify weaknesses in this use of modern technologies, specifically in how they negatively impact the citizens' right to privacy, by analyzing the relationship between mass surveillance practices and IoT devices. The research established that the implementation of mass surveillance measures using IoT technology can lead to violations of ethical standards, security protocols, and the right to privacy. It has been shown that there are issues with applying existing regulations to IoT and mass surveillance and that no universal legal framework currently exists to protect the right to privacy. The use of IoT technology, especially given the rapid development of artificial intelligence, will in the future

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raise numerous dilemmas regarding the entities responsible for collecting personal data, the consents required for data usage and processing, where the collected personal data will be used, and for what purposes. Therefore, it is necessary to adapt privacy laws to modern technological advancements such as IoT and AI. This study utilized methods of induction, deduction, and content analysis.

Keywords: *Internet of Things, artificial intelligence, privacy, security, personal data collection.*

1. Introduction

The rapid development of information and communication technologies, blockchain technologies, artificial intelligence, as well as the Internet of Things (Internet of Intelligent Devices) has led to numerous advantages for modern society. However, in addition to its potential to improve efficiency, convenience, and quality of life, the growing use of IoT raises concerns about privacy rights and security overall, especially in the context of interacting with mass surveillance. The Internet of Things has become not only an expression of networked computing based on cameras, databases, smart sensors, softwares, but also a means of mass surveillance during which data is collected and exchanged. This becomes a problem when personal data is collected, including biometric data and information about personal habits and preferences, as well as location.

The existence of a mass global surveillance system was revealed to the world public by former US government official Edward Snowden at the Web Summit in Lisbon's Altice Arena in 2013. The knowledge that the system of collecting personal data of citizens was built through the surveillance of smart devices that people use, and for which they use the Internet (mobile phones, laptops, computers and any other device that can be connected to the Internet), shocked the world. The discovery that the violation of personality is practically legalized through the violation of privacy has forced the question of the ethics of mass surveillance and the limits of the justification of security reasons for violating the privacy of citizens. The indisputable fact, which is not even denied, that the possibilities of mass surveillance are progressively growing thanks to the Internet of Things and artificial intelligence, caused an increase in the interest of not only the scientific and professional public in this phenomenon, but has also forced states and international organizations to deal more seriously with this phenomenon.

Bearing in mind the above, by combining the methods of content analysis, induction and deduction, the paper analyzes the interaction of the Internet of Things and mass surveillance, with the aim of identifying weaknesses in this use of these technologies, which negatively reflect on citizens' right to privacy.

2. IoT and mass surveillance: A complex web of data, devices, and ethics

Modern times are increasingly characterized by the influence of new technologies in the everyday life of citizens, which further complicates security issues. Modern technologies have also created the need to develop the security of information systems (Marković & Dostić, 2019, p. 173). Networking of information systems, as well as individual devices, leads to a significant increase in their functionality. For this purpose, the IT sector strives to develop non-standard digitized devices intended for data exchange via the Internet, i.e. sending data and/or receiving instructions. Such devices are called intelligent, so this phenomenon was named the Internet of (intelligent) things (IoT), where it does not refer to a single device but to a network of devices and different objects (including buildings) that, being networked, collect and exchange data. In order to collect data, these devices and objects must be equipped with sensors, software and, in general, technologies that enable connection and exchange of data with other devices and systems. Based on the analysis of data collected through IoT devices, their users (business entities, organizations, governments...) can gain insight into trends and accordingly optimize work processes and improve the efficiency of decisions made (Zirojević & Ivanović, 2021, p. 202). These devices generate massive amounts of data, which can then be analyzed using machine learning and other data analysis techniques.

IoT will completely become a part of our homes, service activities, electricity supply, will be present in the production of various types of goods, and we should not ignore the area of security and the possibility of surveillance of citizens by governments around the world. At the same time, this development of IoT possibilities also indicates the growing potential of mass surveillance, no longer in public places (streets, shopping centers, stadiums and other objects and spaces of free movement and assembly) but also in objects and spaces that are considered private.

Bearing in mind the usability of the Internet of Things in practice, in the period ahead, their applicability will grow, but also the possibility of misuse

in sensitive areas of social life. This especially applies to mass surveillance, which in itself is a source of potential threat to citizens' privacy, and the implementation of the Internet of Things makes this ethical and security-legal problem more complex.

From the very term mass surveillance, one can guess that it is about the simultaneous surveillance of a large number of people, with the engagement of a large number of operatives and/or a large number of technical devices. Bearing in mind the growing network of technical devices that are connected to the Internet and can collect and exchange data, in the context of the topic of the paper we speak of mass surveillance as "the indiscriminate monitoring of a population or a significant component of a group of persons" (Privacy International, 2020). However, it can also be organized for the purpose of "spying on the entire population or a significant part of it", which is carried out by states and corporations, by applying various methods based on physical activities and the use of various technical means, they collect not only information about the content of the activity being monitored, but also about all other , at first glance less significant data, which can sometimes play a crucial role in forming the necessary conclusions (Gammeltoft-Hansen & Vedsted-Hansen, 2017).

Due to the invasion of privacy, human rights and freedoms, mass surveillance is itself a cause of ethical concern. The intensity of this concern increases with the increase in the potential of mass surveillance, which is virtually limitless thanks to the availability of Internet of Things resources, and especially with the development of artificial intelligence. The practice of (mass) surveillance is adapted to the circumstances of application and the goals to be achieved, and most often includes methods and actions, such as

> *interception, collection, transmission of data from e-mails, eavesdropping on telephone conversations, 'intrusions' into computers, monitoring and data collection via social networks, but also the collection of so-called meta data (for example, about the time and place of sending a message or phone call)* (Domazet & Dinić, 2022).

In this regard, the case of the Chinese social credit system is particularly interesting, which according to some authors represents "one of the evolutionary forms of mass surveillance" (Domazet, Lubura, Šušak-Lozanovska & Ilik, 2021). Such widespread use of IoT in the function of mass surveillance simply neutralizes the possibility of control of sensitive personal data by citizens and

increases the risk of unauthorized access and surveillance, as well as misuse of data. In such circumstances, a number of ethical questions about consent, transparency and responsibility are further opened. This makes the problem more complex not only ethically, but also from a security and legal point of view. When it comes to solving ethical problems, organizations that use IoT for the purpose of mass surveillance should adopt ethical frameworks and guidelines, to ensure that the use of these devices is transparent and responsible, which also implies respect for the right to privacy of citizens.

3. Security implications of IoT in mass surveillance systems

Even when the use of IoT for the purpose of mass surveillance is within the limits of ethics, the security implications of such use cannot be ignored, and especially not when the principles of ethics are violated. The use of IoT for mass surveillance provides the potential for invasive data collection, which can then be used for political manipulation, marketing and other purposes, raising privacy and security concerns. In security circles, it is pointed out that practically every physical object in the very near future, thanks to the unique identification when connecting via the Internet (IP address), will create a kind of identity of an intelligent thing. Such a facility will be able to create a database of all activities on it, by type of activity, actors and event time, from the moment it leaves the production line. The final point in time cannot be known in advance, because the "intelligence" of such things will reach the ability to provide information on how to repair them, and in the event of a fatal end or damage, they will be able to give us instructions on recycling. Mutual communication and access will take place between such facilities "to the massive processing and storage capacities of the cloud, further strengthened by additional mobile and social networks" (Goodman, 2016).

These devices can be stolen or hijacked or, more commonly, hacked to gain unauthorized access to sensitive data and use the device for malicious purposes. To solve these challenges, it is necessary to implement a combination of security measures, such as encryption, authentication and access control, and thus protect the privacy and security of IoT data. Today, many technical devices, in daily personal use, have built-in chips with developed software for registration and recognition of biometric data (controlling a mobile phone, television, lighting, etc.). At the same time, biometric data does not mean only fingerprints or palm prints and DNA, but now also facial features, the shape of the ears, the characteristics of the irises, the way of walking, the characteristics of the voice, and even the way of breathing. With the help of software with

integrated artificial intelligence, security services around the world can more easily identify rioters at sporting events, perpetrators of criminal acts and, most importantly, terrorists. However, not only the potentials of application to protect the safety of citizens are growing, but also the potentials of arbitrary mass surveillance, i.e. misuse of IoT.

The privacy of individuals becomes virtually unprotected from the indiscriminate collection of data without their consent. It is possible to misuse the data collected in this way for political or other purposes, and in this regard, sensitive social groups (based on religious and/or ethnic affiliation or personal characteristics) are endangered, as well as those individuals and social groups whose political beliefs are unacceptable for the ruling elite. Investigative journalism can also be classified into this category, whose activities are hindered by the very knowledge of possible exposure to secret, even undisguised, surveillance, not only in public places but also in an environment that until recently was considered private, even intimate. For the same reasons, developing the feeling that they are under constant surveillance, restrains people's activities, restricts them to behavior that is not in the least contrary to the ruling policy, despite the awareness of its harmfulness. Here we are talking about the effect of latent intimidation that tends to spread to the entire society, and the goal is to create total power that is achieved "with complete politicization of all segments of social and individual life" (Marković, 2019, p. 11). In such circumstances, distrust develops among people – in each other, as well as in institutions. As a consequence, a culture of snitching develops, characteristic of totalitarian societies, such as Nazism, fascism or Stalinism, as still fresh historical examples.

4. The legal dimension of IoT in mass surveillance: Challenges and solutions

The extremely fast development of modern technologies does not keep up with the legal regulations, especially in the part related to the protection of privacy and personal data of citizens. It can be said that in these areas the situation is becoming worrisome, given the lack of relevant legislation at the international level. Gradual progress can be seen from 2021, when "some countries have started to introduce certain mandatory security requirements for certain categories of IoT devices, such as the United Kingdom" (Page, 2021). Some countries have defined guidelines, best practices, certificates or labeling efforts. Although some US states have implemented privacy protection provisions into local law regarding mass surveillance, problems

arise in jurisdictions in other states where such regulations are not applicable to a particular type of (Abendroth, 2022). According to the report on the use of IoT technologies, conducted by the US Government Accountability Office (GAO), 56 of the 90 federal agencies that responded to the GAO survey reported using Internet of Things (IoT) technologies, most often for: "(1) control or monitor equipment or systems (42 of 56); (2) control access to devices or facilities (39 of 56); or (3) track physical assets (28 of 56) such as fleet vehicles or agency property" (Page, 2021).

Most of these agencies indicated the expansion of the scope of IoT use and, in this regard, the increase in data collection activities and operational efficiency, which should contribute to easier decision-making and increased efficiency, i.e. enabling "agencies to accomplish more with existing resources" (GAO, 2020). From a privacy rights perspective, a 2016 statement by a former US director of national intelligence that "in the future, intelligence services might use the [internet of things] for identification, surveillance, monitoring, location tracking, and targeting for recruitment, or to gain access to networks or user credentials" (Ackerman & Thielman, 2016) raises concerns. This is a very clear indicator of the ability of governments around the world to make the Internet of Things their tool for collecting various data about citizens.

There is no doubt that governments around the world, namely their national security agencies, have the right to collect data and information using the Internet of Things, given the possibility that individuals may use the Internet of Things to commit certain crimes or acts of terrorism. However, the problem arises in cases where governments use IoT capabilities in an illicit manner. The legal basis for combating such abuses in the US is defined by the Warehouse Records Act, 18 U.S.C. §§ 2701 et seq. This law restricts the right of state bodies to access the contents of wire and electronic communications, which is conditioned by the prior obtaining of a court order in the procedures established by the Federal Rules of Criminal Procedure, or "in the case of a State court, issued using State warrant procedures and, in the case of a court-martial […] in accordance with regulations prescribed by the President)" (United States Code, 1988). Regardless of the principle of "reasonable expectation of privacy", US jurisprudence has taken the position that "a computer user may have a legitimate expectation of privacy in the content of email communications"[1], "but where a person chooses to transmit that information to a third party, a person's 'reasonable' expectation of privacy

[1] *U.S. v. Lifshitz*, 369 F.3d 173, 363 F.3d 158 (2d Cir. 2004). Downloaded 2024, May 12 from https://caselaw.findlaw.com/court/us-2nd-circuit/1122505.html

may come to an end"[2]. Thus, in the US, the position is taken that if citizens voluntarily hand over personal data to third parties (for example, IoT device manufacturers) using IoT devices, then there is no reasonable expectation of privacy, and state authorities can collect data, i.e. carry out surveillance, without a court order.

During the COVID-19 pandemic, most countries introduced the application of mass surveillance into legal channels with the aim of ensuring the implementation of the ordered measures for the general safety of citizens (Matijašević & Ditrih, 2021, p. 25). In some of them (Poland, Singapore, South Korea, Russia) the Internet of Things was used in the form of GPS -enabled applications for tracking and restricting people's movements. In Hong Kong, movement control was begining at the airport itself, where arriving passengers were given special wristbands with a unique QR code for tracking. They were required to install the 'Stay Home Safe' app on their smartphones and scan the QR code from the wristband, which allowed the Hong Kong authorities to track their activities (Barker, 2020). There have also been accusations in the media that Russia is using Nokia's SORM equipment and software that allow the authorities to "digital surveillance to the nation's largest telecommunications network" (Satariano, Mozur & Krolik, 2022).

In the European Union, there is a discussion about legal solutions for the use of artificial intelligence, and the biggest stumbling block is precisely the possibility of misuse of biometric data (Mladenov, 2023, p. 36). Ella Jakubowska, a policy advisor in the European Digital Rights network, which is headquartered in Brussels, points out that the importance of the legal solutions discussed go beyond the borders of the European Union, because what the EU makes legitimate, countries in other regions of the world will also accept it as legitimate, which can be abused in countries with authoritarian regimes (Shaer, 2023). The privacy protection during mass surveillance is regulated by the General Data Protection Regulation (GDPR). However, Edward Snowden warned that the GDPR is not strong enough to solve the problem of tech giants violating people's privacy. He believes that the GDPR was initially poorly regulated, because "the problem isn't data protection; the problem is data collection", that is, in other words, spying on citizens is not a problem as long as it does not cause harm to other people, that is, as long as the collected data is kept so that it does not fall into the hands of anyone else (Verdict-Encrypt, n.d.). Regarding the monitoring of electronic communications of citizens on

[2] *Smith v. Maryland*, 442 U.S. 735, 99 S. Ct. 2577 (1979). Downloaded 2024, May 3 from https://supreme.justia.com/cases/federal/us/442/735/

the territory of the European Union, in May 2023 the European Parliament adopted the Resolution on the adequacy of the protection afforded by the EU-US Data Privacy Framework, expressing concern

> *over EO 14086's failure to provide sufficient safeguards in the case of bulk data collection, namely the lack of independent prior authorisation, lack of clear and strict data retention rules, 'temporary' bulk collection, and lack of stricter safeguards concerning dissemination of data collected in bulk; points particularly to the specific concern that without further restrictions on dissemination to US authorities, law enforcement authorities would be able to access data they would otherwise have been prohibited from accessing* (European Parliament, 2023).

Even before the Internet of Things was brought into connection with mass surveillance, the questions of legal regulation of the functioning of the Internet were raised and are still open. The issue of privacy is particularly sensitive on social networks (Skakavac, 2020, p. 76), which are also becoming fertile ground for mass surveillance through the Internet of Things. Social media users are very often careless about protecting their personal data, including their personal photos, which often ends up in the wrong hands exposing them to risks of misuse (Domazet & Skakavac, 2018, p. 117). Lau (2019) warns about the mass surveillance of social networks, pointing to the activities of federal government agencies "as the Department of Homeland Security (DHS)" expanding their activities to collect information from social networks of a different nature, "including political and religious views, data about physical and mental health, and the identity of family and friends". The 'target' of such surveillance is not only US citizens, but also foreign citizens who express their intention to come to the USA. The monitoring of their communication and activities, and the collection of various private data about them, does not pose a problem for the American National Security Agency (NSA), because access to this information on its servers and without the knowledge of the court or Congress is enabled by "Microsoft, Yahoo, Google, Facebook, Apple, Youtube, Skype, AOL and PalTalk" (Adetunji, 2013).

Even more worrying are the statements of NSA Deputy Director Richard Ledgett in 2016 that "his agency is researching opportunities to collect foreign intelligence from biomedical devices and other internet of things (IoT) devices" (Abel, 2016), thus revealing that even pacemakers and other

biomedical equipment can be used to collect personal data and monitor the population.

The misuse of IoT has also already been noted in the education system. Thus, in the Chinese province of Guizhou, chips are installed in school uniforms, which enable the monitoring of students' movements, and the stated purpose of such monitoring is to alert them if the students leave the school premises at the time when they should be in class, or if they sleep during the class. This is combined with facial recognition technology, and there are no guarantees that this surveillance system is not being misused to monitor student activity outside of class (Newman, 2019). In Beijing, facial recognition technology through IoT is being implemented in practically all spheres of life. Thus, during the construction of new residential buildings, the so-called smart locks, with the aim of increasing the security of tenants through face detection, by controlling the entry of foreigners, but also for the purpose of suppressing illegal subtenancy. This measure goes so far as to "asks management to check on senior residents if they haven't entered or left their homes after a certain period of time" (Fingas, 2018).

Having decided to apply for membership in the European Union, Serbia also accepted the path of harmonizing its legislation with that in force in the EU. Thus, when the General Data Protection Regulation (GDPR) was adopted in the EU in 2018, Serbia adopted its Law on the Protection of Personal Data, with which it tried to get closer to the standards set in the EU. There are differences in the appointment and responsibilities of supervisory institutions, which is logical considering that the EU is not a state in the classical sense, but a community of states. Deviations that have greater significance and consequences result in milder punitive measures in the Serbian law than in the GDPR, which does not correspond to the state of security awareness in Serbia.

Therefore, it can be seen that misuse of IoT can occur in several forms, and therefore it is necessary to constantly work on improving the existing legal regulations and develop more effective ways of protecting citizens' personal data. Cases of violation of privacy by private companies are a particular problem, given that numerous cases of such behavior have been recorded so far, and the cooperation of states with private companies in order to implement mass surveillance (such as the case of the Chinese company Huawei). All of this shows that IoT problems will only escalate, and international cooperation is needed to prevent privacy breaches.

5. Conclusion

The variety of definitions and the lack of a universal definition of IoT indicate that it is a complex technology. Despite its many benefits, IoT brings with it many dangers for users. First of all, there is an increasingly noticeable trend in which the population fears the theft of personal data through IoT devices, and the danger of hacking is no less. Then, a growing number of companies around the world are planning to implement IoT devices in their own business, and many companies are already doing so. Therefore, it is necessary to additionally secure against the possibility of hacker attacks, and companies must develop and implement appropriate security standards in the protection of IoT devices. A particular problem is the possibility of IoT devices being used for population surveillance by governments and their agencies around the world. Understandably, the measures of monitoring the behavior of Internet users, i.e. the interception of their electronic communications, will not be disputed in cases where the interests of national security are threatened, or when the prevention of criminal acts, especially terrorist acts, is involved. However, the problem arises when the IoT is misused and indiscriminate mass surveillance of the population is carried out, leading to a massive invasion of privacy.

In practice, a large number of cases of abuse during the implementation of surveillance measures have been recorded, especially after the revelations of Edward Snowden, and this trend has the prospect of growth. Thanks to the development of artificial intelligence, in the future, an increasing number of IoT devices will be interconnected, which will allow governments around the world to use IoT technology to collect even the most intimate data about the individuals they are interested in. This indicates potential violations of ethical norms, security standards and the rights and freedoms of citizens. In the absence of universal legislation protecting the right to privacy, there are problems with the application of existing regulations to the Internet of Things and mass surveillance.

With the above in mind, the role importance of regulation makers at the national and international level regarding the Internet of Things will increase in the future. In this regard, the right to privacy is relatively well defined around the world, although there are different legal solutions in some countries the right to privacy is a constitutional category (Serbia), somewhere it is regulated by laws (too) (EU countries, Serbia…), while in some countries the right to privacy is not an autonomous right (China). If we look at the right to privacy in relation to IoT, it can be concluded that there is a lot of room for improvement. In terms of privacy and personal data protection, there is

a veritable patchwork of different regulations in the US, given that there are no universal regulations established at the federal level. Due to its nature, IoT technology knows no national borders, so the diversity of regulations in the bordering states of the federation facilitates opportunities for abuse. The legal framework for protecting the privacy of EU citizens is the GDPR, which is very thorough and restrictive. However, it turned out that there are weaknesses in the implementation during the activities of the US intelligence services on the territory of the EU, which is why the European Parliament reacted by adopting a resolution in May 2023, which requires finding a solution that would give GDPR priority in such situations as well, i.e. so that citizens EU had equivalent protection before American courts. In this regard, the forthcoming legal regulation of the use of artificial intelligence and, in particular, biometric surveillance will be of key importance for EU citizens. No less significant is the definition of standards for the use of IoT in private companies, both in terms of protection against cyber attacks, and in terms of the use of corporate IoT devices by governments and their security agencies.

Taking into account that the level of awareness of the right to privacy and the level of security culture as a whole are at an unsatisfactory level among the citizens of Serbia, a weaker penal policy reduces the effectiveness of its legal solutions in this area. In this regard, and not only because of this, in order to raise privacy standards to a higher level in Serbia, it is necessary to raise the training and education of employees in companies, public administration and other organizations whose operations encroach on the field of privacy, as well as citizens as individuals, to the level of strategy.

Considering the revelations given to the world by Edward Snowden, as well as numerous allegations of investigative journalism about the abuse of technologies for the purpose of mass surveillance, additional efforts must be made in the coming period, especially in the field of legal protection of privacy in the conditions of the development of artificial intelligence and IoT, and in in connection with that, increasingly sophisticated (covert) mass surveillance of the population. The right to privacy will have to be improved in a way that will ensure adequate protection of personal data in accordance with the potential of modern technologies, such as IoT. This will undoubtedly change the very concept of privacy, which will no longer be viewed in the same scope as before, especially if the users themselves decide to share personal data with third parties through IoT devices. Finally, it is necessary to further develop existing regulations related to the monitoring of electronic communications, given the relatively numerous cases of privacy abuse by governments and their security agencies that have been confirmed in judicial institutions.

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PRIVATNOST POD PRETNJOM – UKRŠTANJE INTERNETA STVARI I MASOVNOG NADZORA

APSTRAKT: Brzi razvoj informaciono-komunikacionih tehnologija, blokčejn tehnologija, veštačke inteligencije, kao i interneta inteligentnih uređaja doveo je do brojnih prednosti za savremeno društvo. Uporedo sa povećanjem udobnosti života i efikasnosti u svim segmentima ljudskog delovanja, automatizacija koja se postiže putem međusobno povezane mreže istovremeno predstavlja i izazov za pravo građana na privatnost. Cilj istraživanja u radu je da se kroz analizu odnosa prakse masovnog nadzora i IoT uređaja, identifikuju slabosti koje se pri ovakvoj upotrebi savremenih tehnologija negativno reflektuju na pravo građana na privatnost. Istraživanjem je utvrđeno da u praksi sprovođenja mera masovnog nadzora korišćenjem IoT tehnologije može doći do kršenja etičkih normi, bezbednosnih protokola i prava na privatnost. Pokazalo se da postoje problemi u vezi sa primenom postojećih propisa na Internet stvari i masovni nadzor, kao i da ne postoji univerzalna zakonska regulativa koja bi štitila pravo na privatnost. Primena IoT tehnologije, posebno imajući u vidu brz razvoj veštačke inteligencije, u budućnosti će doneti brojne dileme u vezi sa subjektima koji prikupljaju podatke o ličnosti, saglasnostima za korišćenje i obradu ličnih podataka, gde će se tako prikupljeni lični podaci koristiti i u koje svrhe. Stoga je neophodno zakonsku regulativu prava na privatnost prilagoditi savremenim tehnološkim dostignućima, kao

što su IoT i veštačka inteligencija. U radu su korišćene metode indukcije, dedukcije i analize sadržaja.

Ključne reči: *Internet stvari, veštačka inteligencija, pravo na privatnost, bezbednost, prikupljanje ličnih podataka.*

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THEORY AND PRACTICE OF FLOOD PREVENTION – A CASE STUDY OF THE CITY OF KRALJEVO

ABSTRACT: Increasingly frequent floods, caused by altered climatic conditions, result significant material damage and loss of human life. The floods of May 2014 were the largest recorded in Serbia, affecting the territory of the city of Kraljevo, particularly the settlement of Grdica and the industrial zone of Šeovac. The damages from the floods impacted residential buildings, infrastructure, agriculture, business entities, and public facilities. Similar flood events, in terms of precipitation volumes and river water levels, also affected the Kraljevo area in 2023. Due to the frequent natural disasters impacting various parts of the territory, along with the extensive network of watercourses and intense climate changes, the city of Kraljevo has adopted an integrated approach to disaster risk reduction. The flood risk reduction system is governed by several legal regulations, primarily the Water Law and the Law on Disaster Risk Reduction and Emergency Management. In compliance with these legal obligations, the city has adopted necessary planning documents, established institutional mechanisms, and properly equipped civil protection units. Additionally, continuous investments have been made in constructing new and reconstructing the existing infrastructure. A significant advancement

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in the city's risk reduction system is the establishment of a civil protection system and inter-municipal cooperation among cities and municipalities in the West Morava River basin. It is important to measure the impact of investments in flood prevention to assess the justification and effectiveness of the resources used. The activities and measures implemented to reduce flood risk from 2014 to 2023 have shown positive results. This paper presents a comparative analysis of the effects of preventive activities and investments in the disaster risk reduction and emergency management system in the Kraljevo area during the specified period. The concluding considerations indicate that preventive investments in the flood risk reduction system and the construction of resilient and necessary protective infrastructure, lead to reduced damages and losses from floods.

Keywords: *Kraljevo, Grdica, Šeovac, floods, Emergency Management Headquarters, prevention, risk reduction system, flood defense operational plan, disaster risk assessment, entities of special significance.*

1. Introduction

Flood defense management, as well as the implementation of measures to reduce the harmful effects of floods from first- and second-order watercourses, are regulated by a set of legal and sub-legal acts. The complexity of the procedures before, during, and after flood events requires continuous investments, both in the construction of flood protection structures and in the development of institutional capacities at the state and local government levels.

Special attention in prevention should be directed towards the significance of the broader community, as well as the behavior of the population living near river courses. Additionally, the role of individuals before, during, and after floods is crucial. The consequences of floods, including the damages and losses caused by flood events, will largely depend on all these factors.

The increased frequency of floods in the past decade has also been caused by climate change. During this period, floods have become frequent, occurring at least once a year with varying degrees of severity, causing damage and losses in different sectors (Warsaw Mechanism).

To illustrate the effects of preventive investments, a case study of the city of Kraljevo, which has been at risk of flooding for years, was used. The vulnerability of Kraljevo in terms of the risk of natural disasters is very pronounced (Assessment of Vulnerability to Natural Disasters and Other

Accidents for the Territory of the City of Kraljevo, 2019, p. 124). The risk level is determined using a probability and consequence matrix according to the formula R=PxC, where R represents the risk level, P the probability, and C the consequences. Floods are identified as one of the unacceptable risks for the city of Kraljevo (Assessment of Vulnerability to Natural Disasters and Other Accidents for the Territory of the City of Kraljevo, 2019, pp. 98 and 108).

To bring flood risk down to an acceptable level and reduce the damage and losses caused by floods, it is essential to implement both structural and non-structural measures (Regulation on the Content and Method of Developing a Disaster Risk Reduction Plan, 2020). By comparing flood events and the state of the disaster risk reduction system in Kraljevo from May 2014 and June 2023, the effectiveness of preventive measures in mitigating flood risk is demonstrated. In similar weather conditions, with heavy rainfall and high river levels, floods have occurred in the same area with varying impacts on the population and economy. The goal is to show how preventive investments can reduce flood consequences through this comparative analysis.

This paper demonstrates the need for an integrated approach to flood risk reduction using the city of Kraljevo as a case study. It emphasizes not only investments in protective infrastructure but also the importance of enhancing public policies. This includes adopting and implementing key documents for the disaster risk reduction system and developing and equipping civil protection units and other crucial entities for safety and rescue.

2. Definition of key terms

To showcase the impact of preventive measures on mitigating the damage caused by floods, it is necessary to define key concepts and examine the state of the flood management and risk reduction system.

The United Nations International Strategy for Disaster Reduction (UNISDR Terminology: Disaster Risk Reduction) defines disaster risk management as a blend of planning documents, institutions, and organizations, along with the skills and capacities needed to minimize the harmful effects and likelihood of disaster events.

The term “high water” is defined as the highest level reached by the river during a flood or a sudden rise in water levels. Ljiljana Gavrilović defines a flood as the overflow of high water from the riverbed (Gavrilović, 1981, p. 7). “While not every high water event necessarily leads to a flood, a flood is always a result of high water” (Gavrilović, 1981, p. 7).

Floods occur as a result of large volumes of water. "Floods are a type of natural disaster caused by the overflow of high water from natural and artificial reservoirs, such as riverbeds and water storage areas. As a category of 'natural risks,' floods, which are atmospheric and hydrological phenomena, can last for hours, days, or even months, and can impact extensive areas that may surpass local or national boundaries" (Milojković & Mlađan, 2010, p. 173). Thus, floods can vary in their territorial impact, affecting parts or entire local government units, regions encompassing multiple cities and municipalities, entire countries, or even extending beyond national borders.

Under the European Union Directive, a flood is defined as the temporary inundation of land that is normally not covered by water, with sources of flooding including rivers, mountain torrents, intermittent streams, and seas (Directive 2007/60/EC, 2007). Similarly, the Water Law (2010) defines floods as the temporary covering of land by water that typically remains dry. The law also distinguishes between floods caused by external sources, such as overflow from watercourses, and those caused by internal sources, such as excess atmospheric and groundwater.

According to the methodological guidelines for creating flood hazard and risk maps in the Republic of Serbia (Regulation on the Methodology for Developing Flood Hazard and Risk Maps, 2017), floods are defined as the temporary inundation of land that is usually not covered by water and can result from either external or internal water sources. The regulation also defines flood-prone areas as regions susceptible to flooding, with protected and unprotected areas determined based on the presence or absence of flood protection infrastructure.

Floods vary based on the duration of the floodwave and other classification criteria, such as whether they are caused by rain, snowmelt, dam breaches, landslides, or flash floods. "A common characteristic of all flash floods is their sudden and rapid onset, relatively short duration, the delivery of enormous amounts of sediment and rocky material, and their significant destructive impact" (Gavrilović, 1981, p. 7).

Flood adaptation measures must be both visible and measurable in terms of their effectiveness and efficiency. It is therefore vital for governments, cities, and municipalities to invest in flood prevention to safeguard people, businesses, the environment, and natural resources. "Floods and flash floods are among the most severe crises and threats to human life and the environment, negatively impacting the economy and the sustainability of natural resources" (Aćimović, 2021, p. 44). In this context, it is necessary

to focus on maintaining and repairing existing flood protection systems and constructing new protective infrastructure.

3. The importance of inter-municipal cooperation of disaster risk reduction

One of the strategies for mitigating disaster risk involves inter-municipal cooperation, which entails the collaboration of local government units. The legal framework for such cooperation is outlined in the Law on Local Self-Government (2007). Recently, these collaborative platforms have gained increasing importance in addressing risks associated with climate change. Joint efforts by cities and municipalities enhance existing resources and foster the acquisition of new knowledge and skills in disaster risk reduction.

Moreover, certain risks, such as floods and forest fires, are of such magnitude and nature that regional communication and collaboration among neighboring municipalities are essential.

Another significant reason for cooperation, from the perspective of local governments, is the rational use of resources, particularly human and material resources. This is crucial, as local government budgets are often insufficient to cover all necessary investments for disaster risk reduction.

4. Analysis of floods from May 214 and June 2023

In this section of the paper, a comparative analysis of flood events and the associated damage caused by floods in May 2014 and June 2023 is presented. Between these two flood events, improvements were made to the disaster risk reduction system and emergency management, along with investments in preventive measures in the city of Kraljevo.

Within the context of domestic legislation and international policies and directives, the disaster risk reduction system should be examined through normative, institutional, material-technical, and functional frameworks.

4.1. Basic Information About the City of Kraljevo

City of Kraljevo is situated in the region encompassing the lower course of the Ibar River and the middle course of the West Morava River. In terms of territorial extent, Kraljevo is the largest local government unit in the Republic of Serbia, following Belgrade. It covers an area of 1,530 km², representing 1.7 percent of Serbia's total land area.

The territory of Kraljevo is characterized by a large number of watercourses, including 174 second-order watercourses and five first-order watercourses. Additionally, the dominant hilly-mountainous terrain, which comprises over 70% of the area, contributes to the occurrence of flood events (Operational Flood Defense Plan for Second-Order Watercourses in the Territory of Kraljevo, 2023, p. 9).

The Western Morava, Ibar, and Gruža rivers are the most significant first-order watercourses traversing the Kraljevo area. The territory of Kraljevo includes the central section of the Western Morava River, extending from the village of Obrva to Ugljarevo, covering approximately 35 kilometers with a riverbed width of around 25 meters. Additionally, the thermal waters of Mataruška and Bogutovačka Banja hold substantial tourist and economic importance for the region.

4.2 Observed Area and Climatic Characteristics 2014-2023

Observed Area

The research area focusing on the effects of preventive measures for reducing flood damage encompasses the city of Kraljevo, with particular emphasis on the settlement of Grdica and the Šeovac industrial zone, which is situated within the adjacent local community of Adarani.

The settlement of Grdica is characterized by a densely populated urban environment with residential buildings intended for individual or family housing. The majority of the houses were constructed between 1960 and 2010. Additionally, Grdica is home to numerous business entities, with the most notable being the companies Radiator, Amiga, and Mladi Radnik.

The Grdica area features a well-developed urban water supply and sewage network, as well as a low-voltage electrical supply network. The area is intersected by the Kraljevo-Čačak railway line, and to the south, the settlement is bounded by the Ibarska Magistrala and an access road leading to the center of Kraljevo. To the north of the observed area, the boundary is the West Morava River.

The local road and street network in the area is extensive, complemented by a drainage system for surface waters, with the most significant stream being Čađavac-Moravac. The area of the settlement Grdica features a gentle slope from south to north, running from the Ibarska Magistrala towards the West Morava River. Following the exodus of 1999 from the southern Serbian autonomous province of Kosovo and Metohija, a portion of the displaced Serbian population settled in the part of Grdica near the West Morava River.

The primary rivers within the territory of the city of Kraljevo include the Ibar, Studenica, Lopatnica, West Morava, and Gruža (Decision on the Enumeration of First-Order Waters, Government of the Republic of Serbia, 2014). On these rivers, seven automatic hydrological stations have been established. These stations are part of the official reporting network of the Republic Hydrometeorological Institute of Serbia (Regulation on the Methodology for Creating Flood Hazard and Risk Maps, 2017).

Based on reports from the Republic Hydrometeorological Institute of Serbia, on May 15, 2014, and June 16/17, 2023, approximate rainfall amounts and similar river levels on the West Morava were recorded. However, this assertion cannot be fully documented because the primary gauge for measuring water levels on the West Morava relevant to the floods in the settlement of Grdica (Miločaj measurement station) was dismantled before the June 2023 flood event due to the construction of the Morava Corridor. Nevertheless, for the purposes of this analysis, data from the Kratovska Stena measurement point and precipitation amounts during the observed periods will be utilized. Additionally, river levels of the West Morava's tributaries within the Kraljevo area, as well as upstream in the Čačak area, were identical on May 15, 2014, and during the night between June 16 and 17, 2023.

4.3. Description of the Flood Event from May 2014

The floods of May 2014 were the most significant in the last 120 years. "The floods affected 22% of the total population, and consequently more than two-thirds of municipalities, tragically resulting in over 50 human casualties and considerable material damage" (Aćimović, 2021, p. 47). Due to heavy rainfall, in May 2014, the territory of Kraljevo experienced the overflow of the West Morava, Gruža, and Musina rivers, as well as the occurrence of flash floods. Consequently, on May 15, 2014, at the recommendation of the Emergency Situations Headquarters, the mayor declared a state of emergency for the territory of Kraljevo (Decision on the Declaration of a State of Emergency for the Territory of Kraljevo, Mayor of Kraljevo, 2014).

The May 2014 natural disasters impacted the entire territory of the city of Kraljevo. The most affected areas were the local communities situated within the catchments of first-order rivers and regions prone to flash floods. While certain parts of local communities were threatened by internal water effects, the occurrences of landslides, erosion, and rockfalls on municipal roads affected nearly every local community. Additionally, the threat of an

epidemic intensely endangered seven local communities; however, it was contained through preventive measures, terrain sanitation, and water control.

The entire territory of the city of Kraljevo was considered to be at risk from river flooding, the effects of flash floods, internal waters, as well as landslides, erosion, rockfalls, and the potential occurrence of epidemics.

Based on the Damage Assessment Report from June 2014, the floods caused significant damage in the observed area. Landslides on the broader territory of the city resulted in damage amounting to 50 million dinars (Report on the Global Damage Assessment from Natural Disasters Affecting the City of Kraljevo. City Council of Kraljevo, 2014, p. 74). A total of 459 residential buildings were damaged (Operational Flood Defense Plan for Second-Order Watercourses in the Territory of Kraljevo, 2023, p. 71), with the damage amounting to 52,788,566.81 dinars (p. 70). In the settlement of Grdica, approximately 300 residential buildings (pp. 32-34, 39-51) and 21 business entities (pp. 60, 170-171) were affected by the floods. A large number of citizens were evacuated, and facilities of the primary school in Grdica were used for housing. As a consequence of the floods, the water supply and sewage systems in Grdica were out of service for 30 days, and the electricity supply was disrupted for 72 hours. The damage was extensive, affecting residential and commercial properties as well as infrastructure. For comparison, the budget of the city of Kraljevo for 2014 was 3,528,551,000 dinars (Decision on the Budget of the City of Kraljevo for 2014, 2013).

4.4 Status of the Disaster Risk Reduction and Emergency Management System in 2014

Regulatory Framework

In the period immediately before or during the flood events of May 2014, and in accordance with the then-applicable regulations (Decision on the Organization and Functioning of Civil Protection in the Territory of the City of Kraljevo, City Assembly of Kraljevo, 2013-III), the city of Kraljevo had developed and adopted the following documents related to disaster risk reduction and emergency management, as well as the protection and rescue system:Decision on the Organization and Functioning of Civil Protection in the Territory of the City of Kraljevo; Operational Plan for Flood Defense for Second-Order Watercourses for 2013; Act on the Formation of the Emergency Situation Headquarters and Technical-Operational Teams within the Headquarters; Decision on the Appointment of Commissioners and Deputy Commissioners for General Purpose Civil Protection Units. Additionally, the

Operational Plan for Flood Defense for Second-Order Watercourses for 2014 was in the process of being adopted by the City Assembly.

Conversely, during this period, the city of Kraljevo lacked a risk assessment for disasters,known at the time as the Assessment of Vulnerability to Natural Disasters and Other Accidents, as well as protection and rescue plans. Additionally, the legislation in effect did not mandate the creation of a Disaster Risk Reduction Plan as part of the essential planning documentation for the area in question.

Institutional Framework – Key Entities in the Flood Defense System

While the Emergency Situations Headquarters of the City of Kraljevo was established by a specific act of the City Assembly (Decision on Amendments to the Decision on the Establishment of the City Emergency Situations Headquarters of Kraljevo, 2013) and consisted of 23 members, the legal entities qualified for protection and rescue in emergency situations were designated by the Decision of the City Council on the Appointment of Qualified Legal Entities for Protection and Rescue in Emergency Situations within the City of Kraljevo (Decision on the Appointment of Qualified Legal Entities for Protection and Rescue in Emergency Situations within the City of Kraljevo, 2014), which identified 13 such entities.

Furthermore, the commissioners and deputy commissioners for general-purpose civil protection had not been appointed by the Emergency Situations Headquarters' resolution, which specified 68 individuals.

Material-Technical Framework

In the time of the May 2014 floods, the city of Kraljevo did not possess equipment for civil protection or flood defense. Investments in flood defense prior to the May 2014 floods, as outlined in the Program for Land Development managed by the Public Enterprise for Land Development "Kraljevo," were coordinated with the relevant water management company (Public Water Management Enterprise Srbijavode) and focused on constructing protective structures along the Ibar River and second-order watercourses under local government jurisdiction.

Functional Framework

Although civil protection commissioners and their deputies were appointed by a specific act of the Emergency Situations Headquarters, there was no training for these individuals, nor was there any equipment provided. Additionally, no civil protection drills or simulations of potential flood events were conducted.

Based on the Report on the Work of the City Emergency Situations Headquarters for 2014 (Report on the Work of the City Emergency Situations Headquarters on the Territory of the City of Kraljevo for 2014, 2015) and the Damage Assessment Report (Report on the Global Assessment of Damage from Natural Disasters Affecting the City of Kraljevo, 2014), it can be concluded that the activities of the emergency protection and rescue system at the time were reactive. They were primarily driven by the flood events and focused on evacuation, relief, rescue, and other measures and actions taken in response to the floods.

Namely, the protection and rescue system, in a broader sense, was essentially in its infancy. This is confirmed by the Decision of the City Assembly of Kraljevo from January 2014 (Resolution on the Management of the Facility at Rudno Located on Cadastral Parcel No. 1726/2 KO Rudno, 2014), which transferred the facility at Rudno to the relevant Department in the City Administration for the purpose of conducting civil protection training. This decision was made less than four months before the flood events of May 2014, so the implementation of the planned training had not even begun when the floods occurred.

4.5 Current State of Disaster Risk Reduction and Emergency Management System in 2023

Normative Framework – Observed Documents

Before the flood events of June 2023, the City of Kraljevo adopted documents in the field of disaster risk reduction, including the Decision on the Organization and Functioning of Civil Protection in the City of Kraljevo, the Disaster Risk Assessment, the Operational Flood Defense Plan for Second-Order Watercourses for 2023, the Conclusion on Determining Entities of Special Importance for Protection and Rescue, and a series of acts establishing general-purpose civil protection units and appointing commissioners and deputy commissioners of civil protection.

Institutional Framework – Entities of Significance for the Flood Defense System

If the Emergency Situation Headquarters of the City of Kraljevo consists of 29 members, the entities of special significance for protection and rescue are determined by a special act of the City Council, totaling 19 entities.

The commissioners and deputy commissioners of civil protection are a unique aspect of the disaster risk reduction system in the City of Kraljevo. To date, a total of 112 individuals have been appointed, and nine general-purpose civil protection units have been formed by special acts of the relevant Department for Civil Protection of the City Administration, with a total of 88 members.

Material and Technical Framework

After forming the civil protection units, it was necessary to secure resources for equipping them. The civil protection equipment includes mobile anti-flood systems and civil protection uniforms.

Among significant investments in flood protection that played a crucial role in reducing flood risk in June 2023, the following stand out: the construction of a protective embankment on the left bank of the West Morava River in the settlement of Grdica, and the construction of the Morava Corridor highway, which also includes the regulation of the West Morava River's course.

Functional Framework

The development of the civil protection system in the territory of Kraljevo following 2014 included the integration of local residents, businesses, educational institutions, and various organizations. Particularly noteworthy for this analysis are the civil protection exercises that simulated flood events and the use of human and material resources. One such exercise took place in the Sheovac industrial zone in October 2021, commemorating International Disaster Risk Reduction Day. The exercise involved participants from civil protection units, the firefighting and rescue unit of the Ministry of Interior's Emergency Situations Sector, and employees of the company GIR. The exercise included the deployment of mobile flood protection systems aimed at safeguarding thiscompany. This scenario closely mirrored the events that occurred in June 2023.

Following the floods of May 2014, and at the initiative of the city of Kraljevo, a move was made towards intermunicipal cooperation among cities and municipalities in the West Morava River basin. The goal of this cooperation was to enhance local government activities within the West Morava basin, focusing on developing civil protection systems, joint actions to reduce risk levels, and creating conditions for rapid and efficient recovery after disasters (Makismović, 2017, p. 30).

The intermunicipal cooperation was formalized through the signing of an Agreement on Cooperation by 19 cities and municipalities within the

West Morava basin (Agreement on Cooperation in the Field of Disaster Risk Reduction and Civil Protection Development in Cities and Municipalities in the West Morava Basin). As part of the EU project "FOR YOU," 900 sets of uniforms for civil protection members and 600 meters of mobile flood protection systems were procured. The project also produced a specialized document mapping areas within the West Morava basin suitable for the installation of mobile flood protection systems if needed. One such area is the Šeovac.

3.6 Flood Risk Reduction Measures from 2014 to 2023

Direct investment in the civil protection system in the Kraljevo area has prevented major river overflows and damage in the settlement of Grdica and the industrial zone of Šeovac, as well as in other parts of Kraljevo territory. During the observed period, various measures were implemented to enhance the city's resilience to floods. The following infrastructure projects and other measures were crucial for reducing flood risk in the area between the two flood events:

- A protective embankment was built on the right bank of the West Morava River to protect the settlement of Grdica from flooding.
- A Disaster Risk Assessment, draft Protection and Rescue Plan, and draft Disaster Risk Reduction Plan were developed.
- The Operational Flood Defense Plan was improved in collaboration with FAO.
- An Agreement was signed for cooperation among cities and municipalities in the West Morava River basin to develop the civil protection system, reduce disaster risk, and ensure rapid recovery after disasters.
- Acts were adopted for the appointment of civil protection commissioners and deputy commissioners, as well as for the formation of general-purpose civil protection units.
- Flood protection equipment, including mobile flood defense systems, was procured.
- Uniforms for civil protection purposes were obtained.
- The number of entities of special significance for protection and rescue was increased.
- Private entities (e.g., GIR, Mladi Radnik, AMC, etc.) were actively involved in the disaster risk reduction system.
- Training for civil protection personnel was conducted in collaboration with other institutions and organizations.

5. Conslusion

In the territory of the city of Kraljevo, which covers an area of 1,530 km², there are five primary watercourses and as many as 174 secondary watercourses. For the purpose of identifying the flood-prone area, the city's territory is conditionally divided into the sub-basins of the Ibar, Gruža, and West Morava rivers.

In order to reduce the risk of floods and the losses when floods do occur, the Republic of Serbia and the city of Kraljevo have undertaken a whole series of preventive measures. In addition to investing in the construction of protective embankments, flood protection equipment has been procured, appropriate documents in the field of protection and rescue have been adopted, general-purpose civil protection units have been formed, equipped, and trained, and cooperation with other cities and municipalities in the West Morava basin has been established.

Alongside significant investments in flood risk reduction measures, it is necessary to establish a hydrometeorological station system for early warning of flash floods in the territory of Kraljevo. In this regard, it is also important that in the future, hydrological (HS), meteorological, or rain gauge (MS) stations be installed in appropriate locations.

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TEORIJA I PRAKSA PREVENCIJE OD POPLAVA – STUDIJA SLUČAJA TERITORIJE GRADA KRALJEVA

APSTRAKT: Sve češće poplave, uslovljene izmenjenim klimatskim uslovima, dovode do velikih materijalnih šteta, ali i gubitaka ljudskih života. Poplave iz maja meseca 2014. godine su najveće poplave koje su zabeležene u Srbiji, a zahvatile su i teritoriju grada Kraljeva, a posebno

naseljeno mesto Grdicu i industrijsku zonu Šeovac. Štete od poplava su nastale na stambenim objektima, infrastrukturi, poljoprivredi, privrednim subjektima i objektima javne namene. Slični poplavni događaji, s aspekta količine padavina i nivoa vodostaja plavnih reka, zahvatili su teritoriju Kraljeva i 2023. godine. Iz razloga čestih nepogoda koje pogađaju različite delove teritorije, kao i razgranate mreže vodotokova i intezivnih klimatskih promena, grad Kraljevo je pristupio integralnom pristupu smanjenja rizika od katastrofa. Sistem smanjenja rizika od poplava uređen je nizom zakonskih propisa, a pre svega Zakonom o vodama i Zakonom o smanjenju rizika od katastrofa i upravljanju vanrednim situacijama. U skladu sa zakonskim obavezama, Grad je usvojio neophodna planska akta, osnovao institucionalne mehanizme i izvršio adekvatno opremanje jedinica civilne zaštite. Dodatno, vršeno je kontinuirano ulaganje u izgradnju nove i rekonstrukciju postojeće infrastrukture. Od posebnog značaja za razvoj sistema smanjenja rizika na teritoriji Grada jeste formiranje sistema civilne zaštite i međuopštinska saradnja gradova i opština u slivu reke Zapadne Morave. Efekte ulaganja u prevenciju poplava treba meriti kako bi se utvrdila opravdanost i učinak uloženih resursa. Aktivnosti i mere preduzete na smanjenju rizika od poplava u periodu od 2014. do 2023. godine dale su rezultate. U radu je, kroz uporednu analizu, dat prikaz efekata preventivnih aktivnosti i ulaganja u sistem smanjenja rizika od katastrofa i upravljanja vanrednim situacijama na teritoriji Kraljeva u navedenom periodu. U zaključnim razmatranjima ukazano je da preventivna ulaganja u sistem smanjenja rizika od poplava, kao i u izgradnju otporne i neophodne zaštitne infrastrukture, rezultiraju manjim štetama i gubicima od poplava.

Ključne reči: *Kraljevo, Grdica, Šeovac, poplave, Štab za vanredne situacije, prevencija, sistem smanjenja rizika, operativni plan odbrane od poplava, procena rizika od katastrofa, subjekti od posebnog značaja.*

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LEGAL POSITION OF THE EUROPEAN CENTRAL BANK IN CONTEMPORARY SOCIAL DISCOURSE

ABSTRACT: This paper analyzes the legal position of the European Central Bank (ECB) within the context of contemporary social conditions, focusing on the ECB's tendency to expand its competencies and the judicial evaluation of the current monetary legislation in the practice of the European Court of Justice (ECJ). In this sense, the paper analytically examines the concept and characteristics of monetary disputes, while exploring the ECB's contribution to democratic monetary governance through respect for the rule of law. The author pays special attention to the ECB's role in protecting human rights, specifically considering the trend towards a so-called "humane approach" to monetary management, which has significant consequences for the preservation of monetary stability as a public good. Using the dogmatic, comparative, and axiological methods, the author aims to highlight the main dilemmas in this area from the perspective of *de lege lata* and possibly offer certain guidelines for *de lege ferenda*.

Keywords*: European Central Bank, monetary law, monetary stability, rule of law, monetary disputes.*

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1. Introduction

Nowadays, the legal subjectivity of the ECB is very developed and complex, which is quite understandable considering its position and role in shaping and preserving international monetary stability and order. The ECB's institutional position has always beenormatively developed and substantially adapted to current events on the international monetary scene, which greatly influenced the evolution of its tasks and mandate. The ECB mandate was primarily based on classical monetary legal presumptions on what the tasks of the central bank are and how its operations should be organized in the monetary policy realm, but over time hybridization of classic postulates took place and brought up central banks some new tasks and activities from the field of fiscal policy and finally lead to the acceptance of its completely new legal position in society and existing normative matrix that relied on the conception of the ECB law as an independent legal discipline that is a result of monetary law disintegration process.

The contribution and the role of the ECB in the field of creation and implementation of soft legislation is of great practical importance because it represents indispensable factual material for filling legal gaps in EMU primary regulations. This research is based on the theoretical premise of the constant and continuous evolutionism of the supreme EU monetary institution competence, which not only becomes complex and heterogeneous due to contemporary social and economic circumstances, but is also recognized (in the author's opinion) as an example of good practice of the managing internal organization, mandate and actions of public law subject with a very specific mandate in such a way that not only contributes to the goals implementation of the sub-system for which that subject is responsible (here the central bank and the area of monetary policy), but also reimagines it, socially valorizes it and justifies it to the point of making it important in the eyes of the people (so we can speak about monetary stability as a public good that generates benefit to all members of society). Following these short findings, the first chapter outlines a judicial assessment of monetary legislation, while the second offers a brief review of monetary disputes, and the third chapter analyses the ECB mandate and rule of law, where the author finds that, nowadays, the ECB position seems quite complex and often ambiguous considering many different task and subtasks. The author hopes that the finding will help to better understand the ECB that determines its role and contribution to public order.

2. Judicial Assessment of Contemporary Monetary Legislation

In monetary law theory, the standard of review is the core legal concept for the legality check and control of monetary legislation effects (Zilioli, 2019, p. 23). Standard of review can be best understood as a legal standard which specific content and meaning depend on the situational framework and current circumstances, but in most cases, it will refer to the judicial readiness degree to consider the substance of the decision brought by public administration bodies as well as central banks.

In the judicial assessment of monetary legal acts, the concept of review can be used in the form of an *intrusive* model and *differential* model (Eskridge & Baer, 2019, p. 1082). Under the intrusive model, there is a very extensive and comprehensive review of decisions and their compliance with higher legal acts (so, profound control in the procedural and material sense). In the case of the differential method, the court control is less detailed and free of in-depth legal analysis and it is more implemented from procedural aspects and requirements. Of course, even in the case of a differential approach, the court must take into account the legality of the decision, and its compliance with the principle of legal continuity (retention) and protection of already acquired rights (but the intensity of the revision is present at a lower level than in the case of the intrusive model application). This is very important to point out because the meaning of the term differential in the case of judicial review of the central bank acts cannot be brought under the umbrella of simple linguistic interpretation. What's more, *we believe* that this approach is quite useful, because due to the nature of its work, the court cannot (always) delve into the merits of every ECB decision (nor is it necessary). Consequently, the differential approach can simultaneously be used as an *ex-ante* filtering function of the central bank's decisions to classify them, conditionally speaking, into those that are undisputed in terms of their legal nature and legal basis, or more or less disputed viewed from certain formal or material monetary legal benchmark (Dimitrijević, 2024, pp. 10–12).

Also, it is important to emphasize that judicial review of central bank legislation inevitably intersects with the concept of the central bank's discretionary rights where those rights are the consequences of its position of monetary sovereignty custodian (as the only institution with the capacity and knowledge to preserve it optimally in challenging time). Also, we must be aware that the nature and severity of circumstances behind monetary legislation can influence practice on choosing a concrete type of review standard. In that sense, the very purpose, scope, and emergence of judicial

review are diametrically different when the central bank act is a direct reaction to an event in the monetary system that needs to be controlled – such as inflation or the collapse of a monetary system. The court review will have different characteristics when it comes to central bank acts enacted in regular circumstances free of economic and financial crises.

3. A brief overview of the monetary disputes (concept and characteristics)

Monetary disputes represent a special category of administrative disputes in which the courts or arbiters decide about the administrative and legal nature of the supreme independent monetary institution acts (Dimitrijević, 2018; Zilioli & Beck, 2022, p. 2). In contemporary monetary law, central banks increasingly resemble independent agencies that enjoy a significant place in the country's constitutional order and whose decisions have important implications for the budget and public finances (where their competences are elaborated by special laws and by-laws). Generally speaking in the review of administrative disputes in which the court decides about the legality of decisions of state regulatory agencies results are almost always in favor of state agencies. Nowadays, that organization represents an example of the so-called smart organizations that evoke wisdom from their own mistakes in the field of public management and somehow have become reputed in their work compared to other public authorities (Bajakić & Kos, 2016, pp. 22–23). Considering that the administrative disputes in the EU area have become very specific there is the need for the formation of a special European Administrative Court that would deal with the mentioned issue more adequately.

4. ECB and the rule of law

The rule of law is tremendously significant for the work of all national and international monetary institutions, which with their acts strive to carefully shape the relationship between law and economic development, because the clear application of regulations, the predictability and enforceability of laws, the key factors of investment risk and the availability of capital, have great importance for economic growth and stability. This principle finds its place in the work of the International Monetary Fund (IMF), the World Bank, the European Bank for Reconstruction and Development, and central banks all over the world (Menkes, 2020, pp. 341–342). Any change in the understanding of the principle of the rule of law must be conditioned by

socio-economic events (in the case of EMU noticeable for quite some time in the last decade) but even so, in contemporary let called its sustainable law, there is always a certain common denominator, what should be covered under this principle (and it refers to the protection already acquired rights, which is the basis of legal certainty). The rule of law is inseparable from the legal definition of the concept of money and its economic functions (Kempf, 2020, pp. 387–388). Namely, considering its function as a means of calculation, we can notice that money has the characteristics of pure public good while considering the function of payment, but it also has the characteristics of a club public good that produces effects within the monetary zone in which it is accepted (this was also the case with the euro as a single currency in the beginning, but considering the external effects of the *lex monetae* principle and the euroization regime, this emphasis on the differences between public goods categories slowly loses its importance).

The EMU institutional structure, thanks to the monetary disputes in which the ECJ arranged in favor of the ECB, got a solid new dimension concerning the protection of human rights, which at first sight is not compatible with the economic criteria of convergence. Of course, with the more "humane" actions of the ECB, which implies that monetary measure has an impact on the scope of human rights, the transformation of the monetary union from a purely economic one to a more "humane" one had to happen, which *in our opinion* represents a significant a value-qualitative step forward, i.e., towards entrenched traditional understandings of why countries create and access monetary unions and how they should act in practice (Dimitrijević, 2024, pp. 7–24). Never before in monetary history has there been an example of a monetary union in which a permanent and unbreakable connection between monetary (general financial stability) and human rights was made through such a rational and above all smart approach? The EMU is an example of a modern monetary union that has an incredible ability (due to the monetary legislator wisdom) to adapt to challenging and sometimes difficult economic and social conditions (thanks to secondary legislation created by the ECB) which, regardless of evident omissions and legal gaps (with the inevitable time-lag) in the implementation of monetary-fiscal policy actions) must be emphasized. In this regard, *we must point out* that monetary unions cannot and do not have to function perfectly, because they are burdened by the problem of limited rationality of the subjects who created it (let's keep in mind that every monetary union is primarily a people creation and as such imperfect as its creator).

The aforementioned tendency is well illustrated by the significant monetary dispute in the case of *Ledra Advertising v Commission and ECB*,[1] where during the crisis (2012) a group of banks based in Cyprus faced serious financial difficulties the government turned to the Eurogroup for financial support, which resulted in negotiations between potential lenders (ECB, European Commission, and IMF) and representatives of the Cypriot government, as borrowers. The negotiations ended with the drafting of a memorandum of understanding (as a form of financial support program) which, among other things, provided for the restructuring of banks, for which disgruntled citizens, as well as the aforementioned marketing agency Ledra Advertising, submitted a request for the annulment of such a decision and demanded compensation before the General Court. The Court considered that the request was unfounded, that there was not enough clear evidence that the damage was caused by the actions of the Commission, and that (generally speaking, because it does not have jurisdiction) it could not decide on requests for compensation arising from the memorandum of understanding (Case T/289 /13). In the appeal procedure, the ECJ found that the EU institutions participating in the drafting of the memorandum of understanding (which activates financial assistance from the European Stability Mechanism-ESM) must comply with the provisions of the EU Charter on Fundamental Rights (which is why it examined in detail whether there was a violation of the complainant's property rights in this dispute and found that as a result of ensuring the stability and smooth functioning of the banking system as a general interest, there was only a minimal but unavoidable financial loss of the real value of the deposits of some bank clients (Lenaerts, 2019, pp. 420–421). In the specific case, the Court (for the first time) established a significant (new) constitutional principle that by Article 17 of the EU Treaty, the European Commission must take care that any future memorandum of understanding is consistent with the provisions of EU law and especially the Charter of Human Rights which marks it as an important turning point in considering the previous relationship between EU Law and EMU Law.

Another significant monetary dispute related to the ECB's concern for human rights concerns the judgment in the case of *Malis and Malis and Others v Commission and ECB*,[2] where a group of citizens (also from Cyprus) initiated proceedings before the General Court to annul the Eurogroup statement (from March 25, 2013). On this occasion, the Court rejected the

[1] Case T-289/13 *Ledra Advertising v Commission and ECB*, EU: T: 2014:981.
[2] Case T 327/13, *Malis and Mali v Commission and ECB*.

request for annulment, because the European Stability Mechanism is not an EU institution but a *sui generis* intergovernmental agreement that *de facto* establishes collective responsibility for the public debt of the Eurozone member states (which is certainly true, but at the same time the provisions of the same agreement provide ECB certain new powers that it did not have before (Case T 327/13). In practice, eurozone member states can count on the financial support provided by the ESM, while EU members who have not introduced the euro as their official currency cannot apply for the same.

In the case of *Florescu and Others*,[3] five Romanian citizens (retired judges with a university career and a distinguished legislative practice) who were now prohibited by the stipulated conditions coupled with the implementation of the financial support program from simultaneously receiving a pension based on service in the private-public sector with income generated from the performance of certain project and other tasks in public institutions (Case C-258/14). The provision of financial support has always been linked to the fulfillment of certain economic and financial conditions, which often entailed (un)popular reforms of existing regulations on tax, labor, social, and budget legislation. The ECJ acted very pragmatically in this dispute as well as in the previous ones and justified the mentioned prohibitions with the request for more rational public spending (which today in many European and non-European countries is oversized to personal and investment spending, which harms the overall aggregate demand and the level of budgetary deficit). *We can see* that the ECJ's current position is very unenviable because there is a duality of public opinion demands, which is reflected in the need to preserve the legacy of primary law (which must not be relativized and selectively applied) supporting the legal mechanisms of monetary coordination and fiscal policies that consolidate the EMU in a comprehensive and unified way (and which are largely embodied in the provisions of secondary monetary legislation).

Namely, in EU law, changes can be observed regarding the scope of application, the entities that apply it, and the very pattern of implementation (Scholten, 2021, p. 21). This means that the field of changes is constantly expanding (especially in the area of national fiscal policies on a gradual but persistent way) with the increasingly pronounced role of the ECB who initiated new very complex procedures of quantitative and qualitative financial sanctioning for non-compliance with established rules of monetary conduct. The ECB has (relatively) new powers in the field of the banking union, with which it supplements the existing ones (it is interesting that in

[3] Case C-258/14, *Florescu and Others*, EU: C:2017:448.

the period between 1999-2013, the total amount of fines reached the value of seven million euros, while in the period from 2017-2019, the total value of fines imposed in the financial supervision procedure reached the amount of 21 million euros (Allemand, 2021, pp. 162–163).

Active involvement of the ECB in the implementation of the rule of law concept was emphasized in practice and during 2019 at the initiative of the European Commission, where the ECB in its official announcements supported the Commission's position that "the principle of the rule of law skilfully avoids being molded into complete definitions that would sublimate all its meaning and indicated its importance in the implementation of legal norms, which is more significant than the function of preserving and protecting general law – and where the segment of arbitrary actions of public administration bodies is undoubtedly significant, but not dominant (European Commission, 2019). In this report, the Commission particularly focused on the domestic (national) interpretation and dimensions of the rule of law principle in the practice of the member states, considering the existing differences in approach, interpretation, and decision-making *vis-à-vis* the ECJ and other EU institutions, as well as the bodies of the member states. At the same time, these differences point to conceptual deficiencies in the application and understanding of principles between different organizations.

The scope and reach of the principle on the development of ECB law appears in practice as indirect and immediate. Indirect influence is expressed through the work of national central banks that are members of the ESCB and that must respect this principle, which is explicitly guaranteed by Art. 2 of the EU Treaty, but also the obligation to respect the principles at the national level, which derives from the rights created by central bank governors, because then it is manifested through the basic principle of organizing and dividing work in public administration bodies. An indirect influence is also observed because the elements of the principle of the rule of law are contained in the structure of the principle of legal security, which is a condition of economic stability. After all, it allows citizens to organize their life activities in such a way that they can foresee the consequences of their actions while protecting already-acquired rights. Therefore, the Commission highlights the importance of the work of anti-corruption agencies and authorities in the fight against various forms of the gray economy and economic and financial crime, as this has an impact on the conditions in which the ECB must maintain price stability as its primary task. The immediate impact is observed in cases where, due to the insufficient content of the principle, domestic (national) courts cannot sanction the central bank due to the existence of presumptions of immunity

or similar privileges, which directly reflects on the legality and legitimacy of the actions of the ESCB, i.e. the ECB. However, the exclusion of the actions of the highest monetary authorities from the principle of tort law has been abandoned in all monetary legislation today, differences are observed only in terms of determining the model (subjective or objective responsibility) for the resulting damage (Golubović & Dimitrijević, 2022, pp. 100–113).

Systemic challenges related to the application of the rule of law can potentially threaten the independent position of national central banks and erode the objectives of the ESCB. What's more, in today's circumstances, these systemic challenges are becoming related to central banking, which is why the Commission states that they have a more concrete character of "direct threats" to (independent) central banking. The independent position of central banks corresponds to the constitutional paradigm that recognizes and guarantees the existence of independent monetary institutions that are (not) accountable to the executive and legislative authorities. Recently, populist and above all secular approaches to this issue point out in a sensationalistic way "the absence of a sufficiently direct connection in the work of central banks with the will of their people", which, *we can note*, is one of the causes of strengthening of distrust towards their work. *We believe* that such statements, which are usually used in the period of pre-election campaigns or in circumstances that deviate from normal economic conditions, are not appropriate if there is no clear justification and logical explanation for such statements (which is bad and ignorant monetary legal management). No central bank in the world (not even the EBC) is a *panacea* for all economic troubles. *In our opinion*, the unreasonably high and unfounded expectations of citizens about central bank duties not only in the economy but also in society can be the source of negative populism. Such expectations led to the emergence of the phenomenon of the multifunctional jurisdiction of the central bank (which was initially an exception, but slowly became a monetary law imperative) not only in European monetary law but also in monetary jurisdictions around the world. The willingness and readiness of the central bank to expand its competencies represent solid proof that the bank "listens, hears and respects the will of the people" because if it did not listen, it would never have agreed to practice all those very different from each other (sometimes mutually conflicting) tasks (Dimitrijević, 2023, pp. 300–303).

The reason for guaranteeing the independent position of the central bank is similar to the recognition and respect of the independent position of national courts by the European Court of Justice, which, according to the ECJ judges, is necessary to protect against external factors (the Union) when resolving

disputes in the internal legal order.[4] At the beginning of 2014, the Commission established additional instruments for ensuring the rule of law, in a separate manual (which EU bodies must adhere to in their work) which also applies to the ECB. This manual is significant for ECB law for reasons that include ensuring and guaranteeing its functional independence, providing adequate protection instruments against the influence of Union law, and promoting compatibility in the work of the ECB with requirements that inter alia keep the principle of the rule of law safe in the concept of *acquis communiataire* (European Commission, 2014).

Rule of law compliance is, also, observed in the structure of all acts and actions of the ECB, through giving opinions, recommendations, and implementation of monetary measures (programs) to reports on the fulfillment of legal and economic convergence criteria. Opinions that rely on the exercise of an advisory function are also in the function of early warning of potential threats to legal certainty (especially when addressed to the governments of member states in connection with specific actions), while on the other hand, ECB measures to annul national measures that can be thwarted by the independent position of the ECB is a very important instrument for ensuring the consistency of the single monetary strategy. In addition to the aforementioned guidelines of the Commission, it is very important to add to the existing instrument the possibility of judicial and administrative control of ECB acts and enable the open attitude of accountability. Judicial and administrative control of the ECB's acts can help ensure that its actions are aligned with the highest and strictest standards of public administration. Independent external control performed by authorities acting *de lege artis* is a prerequisite for work in which there is no place for conformity, which reduces the possibility of mistakes. In practice, three areas can be identified where the ECB's measures influence the lives of individuals, namely: the area related to decisions arising from the original mandate of its jurisdiction; role in the remediation of the consequences of financial and economic (debt) crises, and; areas of prudential supervision of commercial banks (Smits, 2019, pp. 356–357). Perhaps, the most direct impact of the ECB on the lives of citizens can be recognized through its determination and control of the flows and direction of economic flows through the definition of interest rates, the exchange rate policy of the payment system, and other traditional tasks of monetary policy. Although at first glance these are generic goals (defined by the general decisions of the ECB), for which in the event of a dispute the individual who files a claim must

[4] Judgment of 24 June 2019, *Commission v Poland*, case C-619/18m EU: C:2019:531.

prove that he is affected by the decision and that he has suffered some damage. This means that primarily all measures of the ECB (either standard or non-standard) are applied based on the powers given to the ECB by the founding agreements, the provisions of the Statute of the ECB (ESCB), and General Documentation of the Eurosystem, checks do not have inter partes effect, nor is any individual their addressee (Guideline EU 2015/10).

5. Conclusion

The actual legal position of the ECB in the current normative ambient was created as a result not only of the synergy of primary and secondary monetary legislation, but also of greater transparency and credibility in its work which had its verification nor in the jurisprudence of the European Court of Justice, but also in better communication with citizens to bring its work and actions closer to their needs and desires. In the recent analysis of the ECJ's actions in assessing the legality of the ECB's measures, we can note that in addition to the undoubted use of all standard means for elucidating the monetary legal factual situation, a significant factor (let's call it symbolically a special type of evidence) is the economic and political moment in which the measure in question is adopted and applies. Also, the technique of drawing up the ECB measure itself is based on macroeconomic models, econometric functions, and similar economic tools, placing the monetary disputes in which the ECB is sued into a complex and multidisciplinary realm that presents a great challenge to judges because it is diametrically and qualitatively different from the environment and the atmosphere in which most legal disputes start and end. Considering ECB's current legal position, it is evident that is very developed and heterogenous, which is why the concept of defining threshold of minimal and maximal levels of responsibility and its polarization (in the sense of primary and secondary ones) can put functional clearances in its mandate. The implications of the complex legal position of central banks show all their effects not only in the field of monetary policy but also in other areas of general economic policy, today especially fiscal and environmental policy, which can represent a significant moment for public policymakers for a more consistent inclusion of the central bank in the wider social dialogue with other public and private actors responsible for preservation of the public order value and humankind concerns generally speaking but with respecting some limitations that imply that central bank contribution in this field is limited but that does not diminish its endowment.

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PRAVNI POLOŽAJ EVROPSKE CENTRALNE BANKE U SAVREMENIM DRUŠTVENIM PRILIKAMA

APSTRAKT: Predmet analize u radu jeste sagledavanje pravnog položaja Evropske centralne banke (ECB) u savremenim društvenim prilikama uzimajući u obzir tendenciju širenja njene nadležnosti, kao i sudsku ocenu njene legislative u praksi Evropskog suda pravde. U tom smislu, u radu se analitično ukazuje na pojam i obeležja monetarnih sporova, dok se u nastavku teksta sagledava doprinos rada ECB demokratskom monetarnom upravljanju kroz poštovanje principa vladavine prava u njenom radu. Predmet posebne pažnje autora jeste doprinos ECB u zaštiti ljudskih prava, tačnije, razmatranje tendencije tzv. humanijeg pristupa u monetarnom upravljanju koja ima značajne konsekvence na očuvanje monetarne stabilnosti kao javnog dobra. Primenom dogmatskog, uporednog i aksiološkog metoda, autor nastoji ukazati na najveće dileme u toj oblasti na način *de lege lata* i eventualno ponuditi određene smernice *de lege ferenda.*

Ključne reči: *Evropska centralna banka, monetarno pravo, monetarna stabilnost, vladavina prava, monetarni sporovi.*

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CONSUMER RIGHTS PROTECTION AND PROHIBITION OF UNFAIR BUSINESS PRACTICES WITH THE AIM OF IMPROVING CONSUMER NEEDS AND DEMANDS SATISFACTION

ABSTRACT: A characteristic feature of contemporary business and current trends in the market economy is primarily globalization, which has significantly enhanced the possibilities for expanding operations from one market to multiple markets, while simultaneously increasing competitiveness among business entities. Consumer protection in developed market economies is not a new topic; however, under the conditions of globalization, the transition processes of the economy in certain countries, and competitive relations in modern economic flows, this issue has attracted significant attention from the scientific and professional community in recent years. After the introductory section, this paper reviews the concept and significance of consumer satisfaction, specifically addressing the meeting of consumer needs and demands as an economically significant category essential for modern business practices. Furthermore, the paper focuses on the legal provisions related to consumer rights protection and the prohibition of unfair business practices. The concept of consumer protection is safeguarded by the Constitution of the

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Republic of Serbia, while consumer rights protection and the prohibition of unfair business practices are primarily regulated by the Law on Consumer Protection and the Consumer Protection Strategy for 2019-2024.

***Keywords**: consumer protection, consumer rights, prohibition of unfair business practices, consumer satisfaction, Law on Consumer Protection.*

1. Introduction

A characteristic feature of contemporary business and current trends in the market economy is primarily globalization, which has significantly enhanced the possibilities for expanding operations from one market to several, while simultaneously increasing competitiveness among business entities. A crucial role in establishing desirable competitive positions for business entities is played by the consumer milieu, whose attitudes toward certain products or services can best be assessed through the degree of their satisfaction or dissatisfaction with the range of products or services offered. Hence, modern business in the context of globalization and a highly competitive market economy has led to the systemic adaptation of all business entities to the specific needs and demands of consumers.

When consumers are satisfied with the range offered by a business entity, it is highly likely that, over time, a special relationship will be developed between the consumers and the offered products and/or services. This relationship is characterized by consumer loyalty, wherein consumers will continually return to the products and services that initially satisfied them and met their expectations.

Along with other national economic goals, such as employment and economic growth, the quality of products and services is an integral part of the population's standard of living and a source of competitive advantage for individual business entities. Therefore, it is essential to understand the concept of meeting consumer needs and demands as a category by which business success is measured, as well as how the protection of consumer rights and the prohibition of unfair business practices, regulated by the Law on Consumer Protection (2021), can contribute to improving consumer needs and demands satisfaction and consequently, to better business results for business entities.

As the concept of meeting consumer needs and demands (referred to as consumer satisfaction in economic theories) "forms the basis for building good relationships between business entities and consumers and depends on the level of need satisfaction" (Leković & Marić, 2015, p. 60), the following

sections of this paper will delve deeper into the concept and significance of consumer satisfaction, followed by an examination of the legal provisions concerning consumer rights protection and the prohibition of unfair business practices.

2. The Importance and Definition of the Consumer Satisfaction Concept

Business entities that follow contemporary trends in their operations pay close attention to the conditions and consequences of business globalization, which primarily relate to "the possibilities of expanding operations into other markets and the risks of new competitors entering the domestic market" (Tešić, 2016, p. 21). Additionally, as a consequence of the rapid development of information and communication technologies, online shopping has become highly competitive in recent years, providing consumers with an easy way to acquire desired products, whether produced domestically or internationally. Moreover, "faced with a wide range of products and services that differ only slightly, consumers seek additional benefits that will help them make a purchase decision. When facing such a dilemma, what ultimately matters is their satisfaction with the range of products and/or services they have used" (Tešić, 2016, p. 22).

There are many definitions of consumer satisfaction, but they all share a common feature: consumer satisfaction arises from a relationship where comparison and evaluation occur. This evaluation is predominantly subjective and is assessed based on different perspectives of the author: "the level of expectations and perceived experiences" (Oliver, 1980, p. 461); "the surprise associated with purchasing and using a product/service" (Oliver, 1981, p. 27); "expectations and perceived performance levels of products/services, quality, and other outcomes" (Westbrook & Oliver, 1991, p. 85); "current quality and past satisfaction" (Anderson, Fornell & Lehmann, 1994, p. 63); "expected value and selected alternative" (Vranešević, 2000, p. 180); "anticipated satisfaction and purchased product or used service" (Shiv & Huber, 2000, p. 202); "a set of consumer/user requirements and the overall product/service" (Hill & Alexander, 2003, p. 30).

In essence, on one side, there is the expectation or situation that precedes the purchase and/or use of a product or service, i.e., the interaction with the business entity, while on the other side, this situation is compared with the obtained characteristics of the product and/or service, experience, or past satisfaction, i.e., consumer satisfaction.

The aforementioned definitions all share the view that satisfaction is developed through establishing relationships with consumers. Namely, by creating connections with consumers, business entities obtain the necessary information to provide them with greater satisfaction, thereby better fulfilling consumer needs and demands.

Principally, "it can be concluded that satisfaction is observed from two aspects: transactional and cumulative. In the transactional approach, the emphasis is on satisfaction after a decision has been made, and satisfaction is viewed as the result of a single transaction, such as purchasing or using a product or service from a business entity. In contrast, the cumulative approach involves tracking satisfaction over a longer period and encompasses the consumer, i.e., their satisfaction formed in all interactions with the business entity" (Anderson, Fornell & Lehmann, 1994, p. 54). Therefore, overall consumer satisfaction is considered. The cumulative approach in measuring consumer satisfaction is more complex and long-term, and therefore, it allows the business entity to manage the satisfaction mechanism over a longer period.The connection with consumers is reflected in repeat business (e.g., purchasing) with the business entity, thereby achieving greater consumer satisfaction, which positively influences the business performance of the business entity.

In theory, it is emphasized that "regardless of how satisfaction is viewed, all definitions share some common elements. When examined as a whole, three general components can be identified: consumer satisfaction is a response (emotional or cognitive); the response pertains to a specific focus (expectations, product, service, consumer experience, etc.); and the response occurs at a particular time (after using the service, after making a choice, based on accumulated experience, etc.)" (Ćirić & Klincov, 2008; Ćirić, 2011).

The primary goal "of any consumer-oriented business entity is to provide adequate satisfaction to consumers with their product range, which should ultimately lead to loyalty and positive financial results. Therefore, it is crucial for any business entity to understand the factors that lead to fulfilling consumer needs and demands. The factors most frequently mentioned in research as crucial include: perceived product/service quality, consumer expectations, product/service/company image, and perceived value" (Gronholdt, Martensen & Kristensen, 2000, p. 510).

It should also be noted that "the gap between what consumers expected from the product and/or service and their perception of them after using that product and/or service, should be as small as possible. To achieve this, the business entity must understand the essence of fulfilling consumer needs and

demands, which is reflected in the following: it is an active, dynamic process; it possesses a strongly expressed social dimension; meaning and emotions are integral components of satisfaction; the satisfaction process is context-dependent and contingent, encompassing multiple paradigms, models, and modalities; product satisfaction is connected with life satisfaction and the quality of one's own life" (Fournier & Glen Mick, 1999).

The highest level in meeting consumer needs and demands is represented by "TCS – Total Consumer/Customer Satisfaction. Numerous studies highlight achieving total consumer satisfaction as a prerequisite for the business success of business entities in the market. The concept of total consumer satisfaction means that "the product or service fully meets the consumer's needs and desires" (Maričić, 2011, p. 481). Some authors emphasize that "total consumer satisfaction is based on the total (overall) consumer experience, which encompasses the purchasing experience, consumption experience, and product replacement experience" (Best, 2009, p. 132).

Given thepreviously mentioned advantages that business entities can gain from satisfied consumers, it is clear that they benefit from a legal framework for consumer protection that contributes to achieving and improving consumer satisfaction. It is also important to note that consumer protection is a constitutional category, with the Constitution of the Republic of Serbia (2006) stating in Article 90 that "the Republic of Serbia protects consumers, and particularly prohibits actions directed against the health, safety, and privacy of consumers, as well as any dishonest market practices." Furthermore, the commitment of our state to improve the concept of consumer protection is demonstrated by the adoption of the Consumer Protection Strategy for the period 2019-2024 (2019). In the following sections, the provisions of the Law on Consumer Protection (2021) will be analyzed in the context of this paper's topic.

3. Legal Treatment of Consumer Rights Protection

According to Article 5, Paragraph 1 of the Law on Consumer Protection (2021), "a consumer is a natural person who purchases goods or services on the market for purposes not intended for their business or other commercial activities." Furthermore, "a product means any goods and services including immovable property, rights, and obligations, as well as, in the sense of the provisions of this law that regulate the liability for defective products, any movable property separated from or installed in another movable or immovable property, including energy produced or accumulated for the provision of light, warmth or movement"

A "producer" means an entity: (1) that produces or imports finished products, goods, raw materials, or parts in the Republic of Serbia for the purposes of sale, leasing, or other kind of trade, (2) that purports to be a producer by placing their name, trade mark or another distinctive sign on the goods, (3) trader of a product that does not contain information on the producer, if they fail to inform the damaged person in due time of the identity of the producer, or the entity from which the product was bought, (4) trader of an imported product that contains information on the producer, but not on the importer."

It should be emphasized that "the rights and obligations of the buyer and seller from a sales contract are primarily the subject of the contract law, where the primary legal text is the Law on Obligations (1978). However, in situations where the buyer has the status of a consumer, the regulations of the Law on Consumer Protection are primarily applied in addition to these general regulations. The basic purpose of consumer law is to provide the consumer with a somewhat legally privileged position to equalize the real inequality of the parties in this relationship, where the trader is economically stronger, more knowledgeable, and has more information" (Protić, 2019, p. 8). Consumer protection is essential "for the improvement of the economy and society because it contributes to raising the quality of life of citizens. The general goal of consumer protection is to improve the quality of life for all citizens, to achieve and protect the fundamental rights and interests of consumers, to establish a system and institutions for consumer protection, and to create equal partnerships among all stakeholders in consumer protection" (Grandov & Đokić, 2009, p. 77). Consumer protection is "the practice of protecting buyers of goods and services who, due to a lack of caution and knowledge of their rights, encounter unfair business practices in the market" (Čuljak, 2021, p. 1).

According to Article 2 of the Law on Consumer Protection (2021), "the fundamental rights of the consumers are:

1) The right to satisfy the basic needs – accessibility to vital goods and services, such as foodstuffs, clothes, footwear and housing facilities, health care, education and hygiene;
2) The right to safety – Protection from goods and services that are dangerous to life, health, property, or to the environment, or the owning or use of which is prohibited;
3) The right to be informed – obtaining correct information required for a conscious choice from among the goods and services offered;
4) The right to choose – the possibility of choice between a number of goods and services, at accessible prices and with adequate quality;

5) The right to be heard – the observance of consumer interests in the process of the adoption and realisation of the consumer policy and the possibility to be represented through consumer organisations and their associations in the procedure of adopting and implementing consumer policy;
6) The right to redress – protection of the rights of the consumer, pursuant to the procedure provided by law, upon the violation of their rights and compensation for material and moral damage caused by the trader;
7) The right to consumer education – gaining the basic knowledge and skills necessary for making a proper and reliable choice of products and services, knowledge of the fundamental rights and responsibilities of consumers, and the ways in which such knowledge may be implemented;
8) The right to a healthy and sustainable environment – the right to live and work in an environment that is not harmful to the health and wellbeing of present and future generations, and the right to information necessary for assessing the risk to health and wellbeing from the existing environment."

According to Article 3, Paragraph 1 of the same law, "the consumer may not waive the rights conferred by the provisions of this law," while Article 6 stipulates that "unless otherwise provided by this law, the trader shall indicate in an unambiguous, clearly legible and easily identifiable manner, the selling price or unit price of goods and services, in accordance with the regulations that regulate trade".

Article 11 of the Law on Consumer Protection (2021) stipulates that "the trader shall issue a bill for the paid goods or services to the consumer," while the obligation to inform before concluding a contract is regulated by Article 12 as follows: "the trader shall provide the consumer with the following information in a clear and comprehensible manner, in Serbian: 1) the main characteristics of the goods or services; 2) the trading name, registration number, registered office address and the phone number; 3) the selling price or, if the nature of the goods/services is such that the selling price cannot be calculated in advance, the manner in which the selling price is to be calculated, as well as, all additional postal, freight and delivery charges and the possibility that such additional charges may be charged at the expense of the consumer; 4) the method of payment, the manner and time of delivery, the manner of execution of other contractual obligations; 5) the existence of legal

liability for non-conformity of the goods or services with the contract; 6) the manner of the submission of complaints to the trader, in particular the place of receipt and the manner the trader proceeds upon them, as well as terms related to exercising the rights of the consumers on the grounds of conformity; 7) when offering and selling technical goods, the availability of spare parts, connecting devices and similar parts, technical service, i.e. maintenance and repair service during and after the expiry of the period in which the trader is accountable for non-conformity with the contract, i.e. after the cessation of production and the import of the goods; 8)the conditions for the terminating the contract, if the contract is of indeterminate duration or is to be extended automatically;9) the possibility of out-of-court dispute resolution." The same article also regulates that "depending on the circumstance of a particular case or type of goods/service, before the conclusion of the contract, the trader shall inform the consumer on the following: 1) the duration of the contract; 2) the minimum duration of the consumer's contract obligations; 3) the functionality, including applicable technical measures for the protection of digital content; 4) any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of; 5) the existence and conditions for after-sales service and guarantees."

According to Article 13, Paragraph 1 of the mentioned law, "the consumer shall not be obliged to pay any form of additional payments including postal charges and freight and delivery payments if the trader has not received the express consent of the consumer to the specific additional expenses in addition to the agreed remuneration for the trader's main contractual obligation." It is also important to note that the Law on Consumer Protection (2021) provides for the possibility of consumer education and information carried out by associations and federations, as stipulated in Article 15.

4. Legal Treatment of the Prohibition of Unfair Business Practices

According to the definition in Article 5, Paragraph 1 of the Law on Consumer Protection (2021), "business practice shall mean any act, omission, course of conduct or representation, commercial communication including advertising, by a trader, directly connected to the promotion, sale or supply of a product to consumers."

Article 16 of the same law stipulates that "unfair business practices shall be prohibited. The burden of proof for not performing unfair business practices shall be on the trader." The Law on Consumer Protection (2021) defines the

concept of unfair business practices in Article 17. Specifically, according to these provisions, "a business practice shall be regarded as unfair if: 1) it is contrary to the requirements of professional diligence; 2) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of an average consumer whom it reaches or to whom it is addressed to, or of the average member of the group when a business practice is directed at a particular group of consumers."

The same article also states that "business practices that are likely to materially distort the economic behaviour of only a clearly identifiable group of consumers who are particularly vulnerable to the practice, or the underlying product, because of their mental or physical infirmity, age or credulity in a way that the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group." Furthermore, misleading business practices and aggressive business practices are particularly considered unfair.

According to Article 18 of the Law on Consumer Protection (2021), misleading business practice is considered "misleading if the trader leads or could lead the consumer to take a transactional action they would not have taken otherwise, by providing false information, by creating a general impression or in any other manner, even when the information the trader provides is correct, if it deceives or could deceive the average consumer in respect of: 1) the existence or nature of the product; 2) the main characteristics of the product, in particular its availability, benefits, risks, execution, composition, accessories, aftersale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product; 3) the extent of the trader's commitments, the motives for business practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product; 4) the price or the manner in which the price is calculated, or the existence of a specific price advantage; 5) the need for a service, part, replacement or repair; 6) the nature attributes and rights of the trader or his agent, such as identity and assets, qualifications, status, and ownership of industrial, commercial or intellectual property rights or awards and distinctions; 7) the consumer's rights."

According to the same article "a business practice shall also be regarded as misleading if the trader, taking into account all the circumstances of a concrete case, leads an average consumer to take a transactional decision that

they would not have taken otherwise, through: 1) any marketing of a product, including comparative advertising, in a confusing manner that makes it difficult to distinguish from other products, trademarks, trade names or other distinguishing marks of a competitor; 2) non-compliance by the trader with the commitments contained in the code of good business practice by which the trader has undertaken to be bound, if the rules of such code are binding and verifiable for the trader, as well as if the trader indicated in his business practice that he is bound by that code."

Forms of business practices considered misleading business practices are exhaustively prescribed in Article 20 of the Law on Consumer Protection (2021).

Aggressive business practice, according to Article 21 of the mentioned law, "shall be regarded as aggressive if, taking into account all its features and circumstances, the trader significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product through harassment, coercion, including the use of physical force, or undue influence, and thereby causes, or is likely to cause the consumer to make a transactional decision that would not have been taken otherwise. Undue influence means exploiting a position of power in relation to the consumer to apply pressure, even without using or threatening to use physical force, in a way that significantly limits the consumer's ability to make an informed decision." The same article regulates that "in determining whether a business practice uses aggressive practices, account shall be taken of: 1) its timing, location, nature or persistence; 2) the use of threatening or abusive language or behaviour; 3) the conscious exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgment, in order to influence the consumer's judgment; 4) any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise the rights under the contract, including the rights to rescind a contract or to switch to another product or another trader; 5) any threat to take any action that cannot legally be taken."

Forms of business practices considered aggressive business practices are prescribed in Article 22 of the same law.

It should be emphasized that "unfair business practices are prohibited before, during, and after the conclusion of a contract between the consumer and the trader. In other words, these legal provisions cover all phases of the indirect and direct relationship between traders and consumers" (Aleksandrić, Dobrić, Najčević, Popović & Tešanović, 2015, p. 8).

An interesting example of unfair business practice is taken from the practice of European courts and consumer protection bodies. For instance, "baiting consumers and other forms of deceptive advertising include advertising a special sales promotion in which certain products can be purchased at significantly reduced prices on specific days and at specific times, which constitutes prohibited baiting of consumers when the number of promotional products available is unreasonably limited. This would exist, for example, in the case of advertising that computers are discounted by 70% on a specific day at a particular store, only to later find out that there were only 5 computers available at that discount. However, if the trader can supply the product from alternative sources within a reasonable time, this is not considered deceptive advertising" (Aleksandrić et al., 2015, p. 30).

5. Conclusion

Consumer protection in developed market economies is not a new topic, but in the conditions of globalization, the transition processes of the economy in certain countries, and competitive relations in modern economic flows, this topic has attracted significant attention from the scientific and professional public in recent years.

The protection of consumers' economic interests is carried out at both the European Union level and the national level of individual states. Legal and (if applicable) strategic framework at the national level provides significant support to the concept of consumer rights protection and the prohibition of unfair business practices. Furthermore, informing the public adequately and educating the consumer society are the foundations for understanding and implementing legal solutions in practice. In this context, the position of the Consumer Protection Sector of the Ministry of Internal and Foreign Trade of the Republic of Serbia is that compliance with laws and good business practices in this area is not only in the interest of the economically weaker or insufficiently informed party—the consumer—but also of traders who thus engage in fair competition in the market, leading to better business results, lower prices, and a higher level of product and service quality. It is also necessary to emphasize once again that consumer protection is a constitutional category, clearly demonstrating the state's commitment to pursuing an active consumer protection policy and building a legal system in this area that corresponds to a modern democratic society.

As seen throughout this paper, the concept and significance of consumer satisfaction were examined first, i.e., meeting consumer needs and demands

as an economically significant category essential for modern business flows. Then, attention was focused on the legal provisions related to consumer rights protection and the prohibition of unfair business practices.

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ZAŠTITA PRAVA POTROŠAČA I ZABRANA NEPOŠTENE POSLOVNE PRAKSE U CILJU UNAPREĐENJA ZADOVOLJAVANJA POTREBA I ZAHTEVA POTROŠAČA

APSTRAKT: Karakteristično obeležje savremenog poslovanja i aktuelnih trendova u tržišnoj privredi jeste pre svega globalizacija koja je višestruko unapredila mogućnosti za širenje poslovanja sa jednog na veći broj tržišta, ali je sa druge strane uslovila veću konkurentnost između privrednih subjekata. Pitanje zaštite potrošača u tržišno razvijenim privredama nije nova tema, ali je u uslovima globalizacije poslovanja, tranzicionih procesa privrede pojedinih zemalja i konkurentskih odnosa u savremenim privrednim tokovima, ova tema poslednjih godina privukla značajnu pažnju naučne i stručne javnosti. U radu je nakon uvodnog dela učinjen osvrt na pojam i značaj koncepta satisfakcije potrošača, odnosno zadovoljenja potreba i zahteva potrošača kao ekonomsko-privredne kategorije suštinski značajne za savremene tokove poslovanja, a potom je pažnja bila usmerena na zakonske odredbe koje se tiču tretmana zaštite prava potrošača i zabrane nepoštene poslovne prakse. Koncept zaštite potrošača je zaštićen Ustavom Republike Srbije, a zaštita prava potrošača i zabrana nepoštene poslovne prakse uređeni su prvenstveno Zakonom o zaštiti potrošača i Strategijom zaštite potrošača za period 2019-2024 godine.

Ključne reči*: zaštita potrošača, prava potrošača, zabrana nepoštene poslovne prakse, satisfakcija potrošača, Zakon o zaštiti potrošača.*

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ANONYMOUS WITNESS STATEMENTS IN THE EUROPEAN COURT OF HUMAN RIGHTS – IS IT POSSIBLE TO ACHIEVE THE RIGHT TO A FAIR TRIAL?

ABSTRACT: The purpose of this paper is to stimulate reflection on the use and significance of anonymous witness statements in the practice of the European Court of Human Rights. The analysis of selected leading cases in this area will provide an overview of the development of European judicial practice regarding the fact that the right of the defense is seriously compromised when such statements are accepted in criminal proceedings. A significant number of judgments represent a setback, particularly concerning the realization of the right to confrontation, which is characteristic of cases involving statements from anonymous witnesses. In such cases, the question arises as to what counterbalancing mechanisms could compensate for the denial of the accused's rights when the identity of the individual providing incriminating statements is concealed. The statements of anonymous witnesses have, in a way, influenced the practice of the European Court of Human Rights regarding the establishment of a legal standard that has gradually taken on the role of a corrective mechanism, maintaining the balance between opposing parties. The question is whether such a corrective mechanism for the procedural protection of anonymous witnesses can preserve the interests of both sides.

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1. Introduction

The issue of acceptance the anonymous witness statement in the European court of human rights has always caused concern in the regard of the fact that anonymity by itself or hiding of identity of person who gives the statement, appears to be deprivation of the rights of the accusant, which cannot be justified. This is the main reason why one should start from the beginning, while analyzing the judgment of the European court of human rights, more correctly from the judgement which could be in a way considered the precedent, when it comes to the question of exposing the facts that could be represented as the factors of balance. Anonymous witnessing was thought to be an extraordinary measure, which was to be applied restrictively for many years. Likewise, anonymous witnessing was considered to be violation of human rights, i.e. defence rights, particularly in regard of his confrontation with anonymous who give incriminating statements.

The precedent like that, can be recognized in the decision of the European court of human rights in the case *of Doorson v. Netherland,*[1] whereas anonymous witnessing wasn't regarded as the violation of defence rights, because of impossibility of confronting anonymous witness and the accusant. In this decision, European court of human rights stands by the attitude that in the cases when some disadvantages which were the base that the defence functioned are compensated, so the decision cannot be solely or to the significant extent based on the anonymous witness statement. However, this is not case here, because in regard of the fact that the national court hasn't reached his decision solely or in significant extent on the basis of anonymous witness statement. Furthermore, European court of human rights quoted, that the statement gathered by witnesses under the conditions in which the defence rights cannot be provided to the extent, regulated by European Convention, are to be treated with extraordinary attention (*Doorson v. The Netherlands*, § 76). Moreover, to what extent the European court of human rights takes into account the balance of interest of the opposing sides, can be seen on the basis of the attitude in the quoted judgement or that there are wasn't violation of article 6 of the Convention, in regard of the fact that the judgement was not

[1] *Doorson v. The Netherlands*, app. no. 20524/92, 26.03.1996. ECHR.

solely or to the significant extent, based on anonymous witness statement, and on other supportive evidences (*Doorson v. The Netherlands*, § 34).

On the basis of already exposed, one can conclude, that the quoted decision of European court of human right, was the pioneer when it comes to the protection of anonymous witnesses, but with fulfilment of certain conditions, which stood up as the factors of balance, i.e. preservation of the right to fair trial. Protection and development of human rights have become main characteristics of the practise of the European court, which has led to the adaptation of human rights provisions to social changes (Ilić, 2012, p. 136). This decision was not exclusively the basis for the strengthening of the position of anonymous witnesses in the criminal procedure, and it can be also considered to be basis for Recommendation No. R (97) 13 of the Committee of Ministers to member states concerning intimidation of witnesses and the rights of the defence. Bases on the fact, that the recommendation was brought only one year after the judgement in the case of Doorson v. Netherland, it can be concluded that it was necessary to define and explain, in which cases anonymous witness statement would be accepted as evidence. Although does not have obligatory character, they are very important when analyzing this delicate question, like for example the complication of the statement of anonymous witness. The Recommendation itself is designed in the way it doesn't support disruption the factors of balance as that the article 10 defines that anonymous witnessing is considered to be an extraordinary measure.

In the theory and in practice, they are theories that the judgement cannot solely or to significant extent based on the statements of anonymous witnesses, but also that the determing facts which the result of the procedure depends on must be proved, by other proofing means. This attitude of European court of human rights is a legal standard, which was later applied in other judgments in which the statements of anonymous witness were used as the evidence in the criminal procedure. It is not precised or explained what is implied by the determing part of the judgement of European court of human rights, but it should mean that besides anonymous witness statement, there must be enough evidence, which by themselves were on the level reasonable doubt, i.e. the standards of probability for the opening the criminal procedure, hence the case when the statement of the anonymous witness rises the level of probability from reasonable doubt, to the level of complete certainty, which is enough for the judgement of conviction (Lazarov, 2018, p. 91).

The anonymity of witness should be allowed, with some other conditions, only when the identity of the witness is unknown to the accusant, while the way of interrogation when the identity of the witness is familiar

and important to the accusant would have adverse effect on fairness (Pajčić, 2005, p. 55). Anonymity of the witnesses according to the accusant does not imply anonymity of the judges, although that type of practice is not unfamiliar in specific countries. That type of practice is allowed in Peru and Columbia in the cases of criminal offenses related to drug trafficking and terrorism. In this countries we have judges who used numbers rather than their names, and on court documents the they are known as faceless judges (Brkić, 2006, p. 294). The use of evidence gained by the statement of anonymous witness is allowed under the conditions: 1) that the defence didn't submit the request for the cross – examination; 2) that it obviously comes out from the other evidence, that the same judgement would be reached; 3) that the trial court when judging shows cautiousness and criticism (Vasiljević & Grubač, 2011, p. 1016).

Although this decision is not the oldest one which refers to the question of the statement of anonymous witness and evidence credibility, we still can say with the certainty that after this decision the European court has established the minimum of the conditions necessary for the establishment of balance of rights of the opposing sides. After reaching this judgement, as three factors of balance i.e. as three level test, the court separated allowance the possibility to the defence that in adequate and appropriate way deny the statements of the opposite sides, and the judgement of conviction cannot solely or to the significant extent based on the statements of anonymous witnesses, as if there were justified reasons which justify protection of the identity of the witness. We can freely say that the decision in the case of *Doorson v. Netherland* was considered to be precedent, when it comes to the question of testing the violation of human rights based on article 6 of Convention I n all next cases where the statements of anonymous witnesses and their acceptability were looked through.

2. Anonymous witness and difficulties in balancing right to fair trial and defence

After defining the term witness, we can freely say that the European court paid special attention to the anonymous witness statement, a priori from the reason of existence of great prejudice which caused lot of difficulties in defence right (Balsamo, 2006, p. 3008). Otherwise, the European court stands by the attitude where are the guaranty of anonymity is a kind of necessary measure in specific situation, mostly justified by the needs of protection and avoidance of intimidation. Although it is considered to be the civil duty of any citizen, the testifying does not imply that his own safety could be jeopardized

or exposed to the risks, for the sake of fulfilment of the obligations quoted (Lonati, 2018, p. 122).

Although, the interest of the anonymous witness is not clearly approved by the article 6 of the European Convention, they are protected by other provisions, and that cannot be neglected in reaching the decision. Furthermore, European court stands by the attitude that article 6 explicitly does not taking into consideration the interest of the witness in generally, and particularly the victims called to testify. However, in the cases like that, their lives, freedom, or safety can be jeopardized, as well as the interest which generally come into the range of the article 8 of the Convention.[2] For this reason, European court has taken the stand that it would be incompatible with the rights of the victims and witnesses to allow the accused to benefit from the fear they have caused (Turanjanin, 2021, p. 286). Due to the aim of protecting the rights of the injured party in criminal proceedings, judicial practice through the application of the Convention as a live instrument has increased the scope of article 6 of the Convention to the injured party as well (Ilić & Knezević, 2020, p. 39.). The significance of implementation the principles of the right to fair trial demands that any measure which could endanger defence right is applied, only when it is necessary, and the advantage of less restrictive measure is always preferable. The protection of the anonymous witness and their statements from intimidation and pressure, can get to the digress from usual methods during a presentation of evidence.

Besides, the measuring of defence rights in relation to the right of the witness is found appropriate in order for the best possible balance to be found. It is correct that the defence can propose questions in oral and written way for the interrogated person as the range and the nature of the questions proposed are certainly limited. Thus, without acknowledging the identity of interrogated person, it is impossible to prove, if the witness was unbiased, hostile, irreliable. Considering the fact, that the face of witness is hidden during giving the statement, neither defence, nor judge can observe his posture, or facial expression, which could help the forming of opinion, about the credibility of the statement.[3]

[2] *Van Mechelen and others v. The Netherlands*, application no. 21363/93, judgement 23 April 1997, § 54 ECHR.

[3] *Van Mechelen and others v. The Netherlands* § 59 ECHR; Windisch v. Austria, Application no. 12489/86, Judgement 27 September 1990, § 28–29 ECHR; *Kostovski v. The Netherlands* (fn. 5), § 42–43 ECHR.

In order for the witness to be anonymous, it is necessary to fulfil two conditions: the life or the freedom of the witness must be seriously jeopardized, and also the guaranties, which will confirm the credibility and reliability of the witness. In relation to that, Court must implement the investigation, in order to see if there are objective circumstances for the existence of witnesses fear.[4] The balance of interest is even more specific when it is necessary to provide anonymity of the police officers, and members of their family, while on the other hand the interest which are accomplished by this activities need to be protected.[5] However, the most important fact is that in all quoted cases, no matter who takes the role of the anonymous witness, police officer or anyone else, European court established as a legal standard the fact that the judgement of conviction cannot be based solely or in significant extent on statement of anonymous witness.[6]

3. Kostovski v. The Netherlands

In this case, the applicant has appealed that his conviction was based only on two witnesses statements, whose identity he was unfamiliar with, but it was known to the police. In the quoted decision, the European court concluded that the circumstances of the case and limitation of the defence right was on the level that one cannot call it fair trial for the Kostovski.[7] In relation to this case, European court stands by the attitude, that the Convention itself does not forbid the possibility of using the informant in the phase of investigation, but further use of anonymous witnesses statement as the base for the foundation of judgement of conviction, gives way for another question. It is necessary for the accused to get adequate and appropriate opportunity to deny any statement given by the opposing sides as well as to interrogate witnesses during giving statement (Lonati, 2018, p. 125). We can freely say, that in the quoted case, there weren't any mechanism, which could establish the balance

[4] See*: Al-Khawaja and Tahery v. The United Kingdom*, applications no 26766/05 and 22228/06, judgement 15 December 2011, p. 124, ECHR. In this sense, see *Krasniki v. The Czech Republic*, application. no. 51277/99, judgement 28 February 2006, p. 80–83, ECHR.

[5] See: Lüdi v. Switzerland, application no. 12433/86, judgement 15 June 1992, *Van Mechelen and others* v. The Netherlands (fn. 20), margin no 57; *Calabrò v. Italy*, application no 59895/00, judgement 21 March 2002.

[6] *Teixeira de Castro v. Portugal*, app. no. 25829/94, judgement 9 June 1998, § 38–39, ECHR.

[7] *Kostovski v. The Netherlands*, app. 11454/85, judgement 12 May 1985, § 45, ECHR.

of the rights among two opposing sides. On one side, there are serious limitations of the right to confrontation, which is deducted from the fact that the witnesses must be provided, while on the other side accused didn't get adequate and appropriate opportunity to deny anonymous witness statement. The violation of right to fair trial certainly confirms the fact that the defends in quoted case could propose questions only in written form, which excludes the possibility of observing the reactions and posture of the witnesses while giving statement, and which could influence on the expression of the attitude on his credibility and reliability.

4. Van Mechelen and others v. The Netherlands

In the cases of giving statement by the anonymous witness certain specific situation could appear, especially when the police officers are in the role of the anonymous witnesses. On one side, the preservation of their interest must be taken into account, while on the other side, their position is still a bit different from the position of witnesses and victims which do not have status of the police officers. There are the main reasons for the restrictive use of police officers as anonymous witnesses. To secure the anonymity of their identity is important for the reason of their safety, the safety of their families, but also to guard the anonymity during participation in secret operations. It should be outlined that in these cases, investigating judge had already known the identity of the witnesses, and had already made the list about the statement, which could be the base for the establishment of reliability and credibility for the witness. Nevertheless, the fact that the police officers, interrogated in the investigation by the judge who had already been familiar with their identity, wasn't good enough reason for the establishment of the factor of balance, taking into account that the statement of anonymous witnesses, police officers in this case are the only proof for reaching the judgement of conviction. The use of undercover investigators as a method of infiltration into the criminal environment over the time became an unavoidable criminal strategic institute (Filipović & Koprivica, 2022, p. 110).

When it comes to the cases like this, it is of the crucial importance, that the test of equivalency, that is known in the practice of the European court in only few cases. Related to that, it is considered, that there wasn't any breaking of the procedure if the information gathered by the help of concealed form of communication, are used as proofs, but under the conditions that this kind of communication cannot be equal to the interrogation of the accusant in formal sense (Karas, 2012, p. 129). The test of equivalency means that any

communication with the undercover agent, cannot be identified to the process of interrogation of accusant (Karas, 2012, p. 129).

As the best example of check out the equivalency, the case *Allen v. United Kingdom*[8] stands out. In the quoted case, the suspect killed the merchant during the criminal act of robbery. The suspicious defended himself by silence, and after being deprived of freedom, he was sentenced to jail, whereas the room where he was kept in was wired. In the same room with him, there was secret informer, which acted by the instructions of police officers. In this case, European court was by the attitude that secret informer here is the same as undercover agent. Likewise, European court was also by the attitude that the police in this way instructed the secret informant, who was working on the weakening of the resistance of the suspect in order to gather information through long – term acting.

Although, there wasn't any physical pressure, the psychological was present in this part. In this case, there was testing if the right of the protection from self-accusation was harmed, i.e. if the suspect was exposed to certain pressure or gave the statement to the undercover agent willingly (*Allan v. United Kingdom*, § 44). It is of the crucial importance to affirm the way the accusant gave the statement and wasn't encouraged to admit criminal act, because it could lead to the harm of the procedure (*Allan v. United Kingdom*, § 43). Admission which the accusant, later guilty of charge gave in this way in the main trial, was used as the main evidence, although they weren't the result of spontaneous and unencouraged interrogation (*Allan v. United Kingdom*, § 53). For the stated causes, the European court has established that this led to the violation of article 6 of the Convention. Unlike this case, the European court stands by the attitude in case Khan v. United Kingdom[9], that there was not violation of fairness of trial, considering the fact that the suspects were exchanging the information about the trafficking of the narcotics in mutual conversations, without any pressure or interfering undercover agent.

5. Lüdi v. Switzerland

In criminal proceedings, undercover investigators, also familiar as undercover agents occupy special position when they act as witnesses, and there are different opinions in practice about evaluation of their statements (Golubović, 2021. p. 86). The mode of operation of the undercover agent

[8] *Allan v. United Kingdom*, app. no. 48539/99, judgement 05 November 2003.
[9] *Khan v. United Kingdom*, app. no 35394/97, judgement 04 October 2000, ECHR.

incorporates elements of intelligence work in some way (Škulić, 2005, p. 374). The most important decision reached by European court in the cases like this is Lüdi v. Switzerland.[10] The judgement of conviction of the applicant based on transcript of telephone conversations, between him and undercover agent who was never interrogated in the trial. Although it could be freely said that the impossibility of the applicant to interrogated the anonymous witness in quoted case represent violation of defence right, the judges of European court established that there was not violation of article 6 of the Convention, while using the factors of the balancing.

That is why one should go back to the legal standard of European court, which enables the determing if the statement of the witness solely or to the significant extent influenced reaching of the judgement of conviction. In the quoted decision, European court refused to give the statement of undercover agent decisive role in the range of the evidences that the judging court is based one. On the opposite, European court gave the statement of anonymous witness of that kind more rhetorical importance, when it comes to the reconstruction of the facts. In quoted case, European court has reached the judgement of conviction, based on the admission of the applicant, and his co-accused, hence, the anonymous witness statement is not solely or to the significant extent influence on reaching decision like that, but more like supportive role. In the quoted case, it is affirmed that there was not the violation of article 6 of the Convention. Certainly, in the end, we should mention that in the quoted case European court established that legal interest of the authorities is the preservation of anonymity of undercover agents, in order to re-engage them in future operations (*Lüdi v. Switzerland*, § 49). Additionally, defense rigft must be preserved, ensuring the principle of equality of arms, particularly when the undercover agent becomes anonymous witness (Delibasić, 2016, p. 83).

6. Acceptability of statements of anonymous witnesses

After exposing the most important decisions of European court, in the regard of the anonymous witnesses and their statements, one should make short outline and analyze the connection or better to say mutual common thread. The identification of this criteria considers to be defined by praetor's edict abortus acceptability and use of such evidences (Vogliotti, 1998, p. 859).

As it logical, after reaching numerous decisions when it comes to the question of certain complex question, as the anonymous witness statement,

[10] *Lüdi v. Switzerland*, app. no 12433/86, 15 June 1992, ECHR.

and the question of their credibility of proof and significance, the practice of European court has in time lavished its mechanism tending to satisfy the interest of both sides. In the beginning, European court was really restrictive in regard of acceptability and use of anonymous witness statement. Their use was mainly tied for the phase of investigation, which was justified, but the problem appears when the question of their reuse imposes itself correctly, when the judgement of conviction had to be reached by the first instance court. In the cases like these, European court has to take into account not only the rights of the defence, but also the interest of person asked to testify.

It is correctly that article 6 explicitly does not demand that the interest of witnesses has to be taken into account, especially victims ask to testify. However. their lives, freedom, or safety, could be jeopardized, as well as the interest that generally fall into the range of the area of article 8 of the Convention. In accordance to that, state members of the Convention would surely need to organize their criminal procedures, so that the interest couldn't be unjustifiably jeopardized. In this context, the principles of the fair trial impose the need of balance between the interest of the defence, to the interest of the victims and witnesses ask to testify (*Doorson v. The Netherlands*, § 70).

In the quoted cases, certainly the big problem is the way of taking statements of anonymous witness. In the aim of the respect the right to the fair trial, unfavorable position of the defence, has to be balanced by the certain approach, whereas the hearing of the anonymous witness was managed without the accusant, but with active participation of the judge and attorney. On the other side, while the judge in previous years had to be informed about the identity in order to confirm his credibility (*Van Mechelen and others v. The Netherlands*, § 50), nowadays it is considered to be enough that the judge and the attorney gets the possibility of observation, and hearing of the witness while giving statement in the court (Lonati, 2018, pp. 134–135).

7. Conclusion

The jurisprudence of the European court is turning to the accusant, when the witness does not give the statement in the main trial, and in the way violates one of the elementary rights of the accusant, and that is the right of the defence. However, observing from the legal perspective, one of the very important postulates is to be obeyed and that is auditor et altera pars. Based on these facts, it is of great importance to mention that the Convention is a live instrument, subjective to adjustment of newly created circumstances, and

related to it, more extensive interpretation, in order to preserve the interest of the opposing sides, and secure the right to fair trial and its basic principle.

Although, the article 6 of the Convention brought out firstly for one side, which was considered endangered, accomplish its right, analyzing the decisions of European court, we conclude that in certain cases it has extended effect, which enables thorough effectiveness, and application of article 6 which guarantees the right to fair trial in the right way. By the interpretation of the Convention in this way one can see that her extended or hidden effects, is only the protection of the accusant, but also the protection of the witness in the criminal procedure. That is exactly why in order to protect the interest of one and another side, from the jurisprudence arose the factors of balance, i.e. three level test, and the test of the equivalency, which appear to be the quadrant of providing the right to fair trial in these specific situations, when it seems impossible to satisfy the interest of both sides.

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ISKAZI ANONIMNIH SVEDOKA PRED EVROPSKIM SUDOM ZA LJUDSKA PRAVA – DA LI JE MOGUĆE OSTVARITI PRAVO NA PRAVIČNO SUĐENJE?

APSTRAKT: Svrha ovog rada je da se podstakne razmišljanje o upotrebi i značaju koji imaju iskazi anonimnih svedoka u praksi Evropskog suda za ljudska prava. Analiza odabranih, vodećih slučajeva u ovoj oblasti omogućiće nam pregled razvoja evropske sudske prakse u ovoj oblasti, kao i određenih specifičnosti s obzirom na činjenicu da je pravo na odbranu ozbiljno narušeno kada dođe do prihvatanja ovakvih iskaza u krivičnom postupku. Veliki deo presuda predstavlja korak unazad, naročito kada je u pitanju ostvarivanje prava na konfrontaciju, što je karakteristično u slučajevima davanja iskaza od strane anonimnih svedoka. U takvim slučajevima postavlja se pitanje koji bi mehanizmi ravnoteže mogli da nadoknade uskraćivanje prava optuženom kada se prikrije identitet lica koje daje inkriminišuće izjave. Iskazi anonimnih svedoka su na neki način

izvršili uticaj na praksu Evropskog suda u pogledu utemeljenja pravnog standarda, koji je s vremenom dobio ulogu korektivnog mehanizma koji održava ravnotežu suprotstavljenih strana. Postavlja se pitanje da li takav korektivni mehanizam procesne zaštite anonimnih svedoka može očuvati interes obeju strana.

Ključne reči: *anonimni svedoci*, *Evropski sud za ljudska prava*, *pravo na pravično suđenje*, *iskazi anonimnih svedoka*, *mehanizam ravnoteže*.

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The title and number of illustrations (diagrams, photographs, graphs/charts) should be centered above the illustration, size 12 pt. The title and number of tables should also be centered above the table, size 12 pt. The source must be stated ("Source: …") below the illustration or table, size 10 pt. If the results presented graphically or in tables are from the author's research, the source below the illustration or table should be: Author's research.

If the author wishes to include acknowledgments or references to project(s) under which the text was written, they should do so in a separate section titled "Acknowledgments", following the Conclusion in sequence and preceding the author's affiliation and the abstract in Serbian.

For writing references, use the APA (Publication Manual of the American Psychological Association) international standard for writing references. Notes or footnotes may contain additional explanations or comments related to the text. Footnotes should be written in Times New Roman font, size 10 pt.

In APA style, the source being cited is mentioned **within the text**, with the elements (author, year of publication, page number of the quoted section) enclosed in parentheses immediately before the period and separated by commas.

RULES FOR IN-TEXT CITATIONS

When citing a source written by a single author:

If the author's name appears in the sentence, the year of publication of the cited text is placed in parentheses immediately after the author's name, and the page number is provided at the end of the sentence:

Example:

As Besermenji (2007) highlights, “air pollution is a particularly prevalent issue, primarily due to an exceptionally low level of environmental awareness and a lack of professional education in the field of environmental protection” (p. 496).

If the author’s name does not appear in the sentence, the author’s last name, year of publication, and page number are placed in parentheses at the end of the sentence:

Example:

Also, “rural tourism is expected to act as one of the tools for sustainable rural development” (Ivolga, 2014, p. 331).

Note: If the citation is a paraphrase or summary, the page number is not necessary.

Example:

The environment encompasses everything that surrounds us, or everything that is directly or indirectly connected to human life and production activities (Hamidović, 2012).

When citing a source written by two authors:

Use “and” or “&” between the authors’ last names, depending on whether the authors are mentioned in the sentence.

Examples:

Chaudhry and Gupta (2010) state that as many as 75% of the world’s poor live in the rural areas, and more than one-third of rural areas are in arid and semiarid regions.

Hence, “rural development is considered as a complex mesh of networks in which resources are mobilized and in which the control of the process consists of interplay between local and external forces” (Papić & Bogdanov, 2015, p. 1080).

When citing a source written by 3-5 authors:

For the first-time citation, list all authors:

Example:

(Cvijanović, Matijašević Obradović, & Škorić, 2017)

For subsequent citations, list only the first author followed by “et al.”:

Example:
(Cvijanović et al., 2017)

When citing a source written by 6 or more authors:

For both the first and subsequent citations, list only the first author followed by "et al.":

Example:
(Savić et al., 2010)

When citing a text authored by an organization:

If the author of a paper is an organization, include the organization's name in parentheses as the author. If the organization has a known abbreviation, provide the abbreviation in square brackets after the full name in the first citation, and use only the abbreviation in all subsequent citations.

Example:
First citation: (Serbian Academy of Sciences and Arts [SASA], 2014)
Subsequent citations: (SASA, 2014)

When citing texts by authors with the same surname:

Use the authors' initials to avoid confusion.

Example:
The viewpoint expressed by D. Savić (2017) has been presented...

When citing multiple references by the same author from the same year:

If there are two or more references from the same author in the same year, add letter designations "a", "b", etc., after the year.

Example:
(Dragojlović, 2018a)
(Dragojlović, 2018b)

When citing two or more texts in one citation:

List the authors' last names in the order of publication and separate them with a semicolon.

Example:
Obviously, living and working in rural areas has always been connected with specific material and symbolic relations to nature (Milbourne, 2003; Castree & Braun, 2006).

When citing a newspaper article with a specified author:

Example:

It was reported in *NS uživo* (Dragojlović, 2021) that...

In the reference list, format this reference as follows:

Dragojlović, J. (2021). Anketirani Novosađani za vraćanje smrtne kazne u Ustav [Novi Sad residents surveyed to return the death penalty to the Constitution]. *NS uživo*, January 22.

When citing a newspaper article without a specified author:

Example:

As published in *Politika* (2012)

In the reference list, format this reference as follows:

Politika. (2012). Straževica gotova za dva meseca [Straževica finished in two months]. February 1.

When citing personal correspondence:

Example:

According to Nikolić (2020),

In the reference list, format this reference as follows:

Nikolić, A. (2020). Pismo autoru [Letter to the author], November 21

When citing a text in press:

At the end of the reference, before the period, add "in press."

When citing court decisions, the practice of the European Court of Human Rights, and other sources from domestic and international judicial practice:

The reference should contain as complete information as possible: type and number of the decision, date when the decision was brought, publication in which it was published.

Example in text:

(Decision of the High Court in Belgrade – Special Department K.Po1 no. 276/10 dated January 26, 2012)

Example in text: (Borodin v Russia, par. 166.)

Note:

Sources from judicial practice **should not be listed** in the reference list. The full reference **should be provided** in a footnote. When citing the practice of the European Court of Human Rights, the application number should also be included.

Example for reference in a footnote:

As stated in the Decision of the High Court in Belgrade – Special Department K.Po1 no. 276/10 from January 26, 2012. Intermex (2012). Bilten Višeg suda u Beogradu [Bulletin of the High Court in Belgrade], 87, p. 47.

Borodin v Russia, application no. 41867/04, ECHR judgment, February 6, 2013, par. 166.

When citing laws and other regulations:

When citing a legal text or other regulation, mention the full name of the law or regulation and the year it came into force.

Example:

(Criminal Procedure Code, 2011)

(Regulation on the Content of the Decision on the Implementation of Public Procurement Procedure by Multiple Clients, 2015)

This rule also applies to laws or other regulations that are no longer in force.

Example:

(Criminal Code of the Republic of Serbia, 1977)

When citing international regulations, it is sufficient to mention the abbreviated name of the document along with its number and the year it was adopted.

Example:

(Regulation No. 1052/2013) or (Directive 2013/32)

When citing a text with an unknown publication date or author:

For works with an unknown date, use "n.d." (non-dated) in place of the year.

Example:

Their significance for parliamentary processes is immeasurable (Ostrogorski, n.d.).

If the paper uses a reference to a paper by an unknown author, cite the title of the paper and include the year if known.

Example:

All that has been confirmed by a mixed, objective-subjective theory (Elements of a criminal offense, 1986, p. 13).

Important Note:

Cited sources (regardless of the language in which they are written) should not be translated into English, except for the titles of papers (publications, legal acts) which should be translated and written in square brackets.

Example:

1. Matijašević Obradović, J. (2017). Značaj zaštite životne sredine za razvoj ekoturizma u Srbiji [The importance of environmental protection for the development of ecotourism in Serbia]. *Agroekonomika*, *46*(75), pp. 21-30.
2. Jovašević, D. (2017). *Krivična dela ubistva* [*Murder as a Crime*]. Beograd: Institut za kriminološka i sociološka istraživanja.
3. Uredba o ekološkoj mreži Vlade Republike Srbije [The Ecological Network Decree of the Government of the Republic of Serbia]. *Službeni glasnik RS*, br. 102/10.
4. Zakon o turizmu [The Law on Tourism]. *Službeni glasnik RS*, br. 17/19.

References Section:

At the end of each manuscript, include a **"References"** section listing all the cited sources in alphabetical order. Titles in foreign languages that begin with definite or indefinite articles ("a", "the", "Die", etc.) should be listed as if the article does not exist. The list of references should include only works that are published or accepted for publication.

The editorial board emphasizes the usage of recent references whenever possible, which will be a key criterion when selecting manuscripts for publication. Each reference must include a DOI number if available. If the cited reference does not have a DOI number, the author may include a URL.

Example of referencing with a DOI number:

Počuča, M., & Matijašević Obradović, J. (2018). The Importance of Evidence Collection in Procedures for Criminal Acts in the Field of Economic Crime in Serbia. In: Meško, G., et al. (eds.), *Criminal Justice and Security in Central and Eastern Europe: From Common Sense to Evidence-based Policy-making* (pp. 671-681). Maribor: Faculty of Criminal Justice and Security and University of Maribor Press. DOI: 10.18690/978-961-286174-2

Example of referencing with a URL:

Milosavljević, B. (2015). Pravni okvir i praksa primene posebnih postupaka i mera za tajno prikupljanje podataka u Republici Srbiji [Legal framework and practice of application of special procedures and measures for secret data collection in the Republic of Serbia]. In: Petrović, P. (Ed.), *Posebne mere tajnog prikupljanja podataka: između zakona i sudske prakse* [*Special measures for secret data collection: between law and case law*] (pp. 5-33). Beograd: Beogradski centar za bezbednosnu politiku. Downloaded 2021, January 15, from https://bezbednost.org/wp-content/uploads/2020/06/posebne_mere_tajnog_prikupljanja_podataka__vodic_.pdf.

Examples of references to be listed at the end of the manuscript:

References

1. Agencija za privredne registre. Privredna društva [Companies]. Downloaded 2020, January 10 from https://www.apr.gov.rs/o-agenciji.1902.html
2. California Secretary of State. Downloaded 2020, December 15 from https://www.sos.ca.gov/business-programs/
3. Dukić-Mijatović, M. (2011). Korporativno upravljanje i kompanijsko pravo Republike Srbije [Corporate Governance and Companies Business Law of the Republic of Serbia]. *Pravo – teorija i praksa*, *28* (1-3), pp. 15-22.

4. Dragojlović, J., & Bingulac, N. (2019). *Penologija između teorije i prakse* [*Penology between theory and practice*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu.
5. Dragojlović, J. (2021). Anketirani Novosađani za vraćanje smrtne kazne u Ustav [Novi Sad residents surveyed to return the death penalty to the Constitution]. NS uživo, January 22.
6. Gopalsamy, N. (2016). *A Guide to Corporate Governance.* New Delhi: New Age International.
7. Jesover, F., & Kirkpatrick, G. (2005). The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries. *Corporate Governance: An International Review*, *13* (2), pp. 127-136. DOI: 10.1111/j.14678683.2005.00412.x
8. Milosavljević, B. (2015). Pravni okvir i praksa primene posebnih postupaka i mera za tajno prikupljanje podataka u Republici Srbiji [Legal framework and practice of application of special procedures and measures for secret data collection in the Republic of Serbia]. In: Petrović, P. (ured.), *Posebne mere tajnog prikupljanja podataka: između zakona i sudske prakse* [*Special measures for secret data collection: between law and case law*] (pp. 5-33). Beograd: Beogradski centar za bezbednosnu politiku. Downloaded 2021, January 15 from https://bezbednost.org/wpcontent/uploads/2020/06/posebne_mere_tajnog_prikupljanja_podataka_-_vodic_.pdf
9. Počuča M., & Matijašević Obradović, J. (2018). The Importance of Evidence Collection in Procedures for Criminal Acts in the Field of Economic Crime in Serbia. In: Meško, G., et al. (eds.), *Criminal Justice and Security in Central and Eastern Europe: From Common Sense to Evidence-based Policy-making* (pp. 671-681). Maribor: Faculty of Criminal Justice and Security and University of Maribor Press. DOI: 10.18690/978-961-286-174-2
10. Regulation (EU) No. 1052/2013 establishing the European Border Surveillance System (Eurosur), OJ L 295 of 6/11/2013.
11. Škorić, S. (2016). *Uticaj poslovnog imena privrednog društva na njegovo poslovanje - doktorska disertacija* [*The influence of the business name of the company on its business - doctoral thesis*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu.
12. Škulić, M. (2007). *Krivično procesno pravo* [*Criminal Procedural Law*]. Beograd: Pravni fakultet Univerziteta u Beogradu i JP Službeni glasnik.

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14. Veljković, N. (2017). *Indikatori održivog razvoja: Srbija i svet* [*Sustainable development indicators: Serbia and the world*]. Downloaded 2017, October 22 from http://indicator.sepa.gov.rs/o-indikatori
15. Zakonik o krivičnom postupku [Criminal Procedure Code]. *Službeni glasnik RS*, br. 72/11, 101/11, 121/12, 32/2013, 45/13, 55/14 i 35/19.

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